Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-335

OPPENHEIMER FUND, INC., OPPENHEIMER MANAGEMENT CORP., OPPENHEIMER & CO., LEON LEVY, JACK NASH, EDMUND T. DELANEY AND EMANUEL CELLER,

Petitioners,

—v.—

IRVING SANDERS, EGON TAUSSIG, MICHAEL SHAEV AND RITA SHAEV,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 1, 1977

CERTIORARI GRANTED OCTOBER 31, 1977

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-335

OPPENHEIMER FUND, INC., OPPENHEIMER MANAGEMENT CORP., OPPENHEIMER & CO., LEON LEVY, JACK NASH, EDMUND T. DELANEY AND EMANUEL CELLER,

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IRVING SANDERS, EGON TAUSSIG, MICHAEL SHAEV AND RITA SHAEV,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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6– 2–69	Filed Oppenheimer Fund, Answer.	4
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12– 4–73	Filed memo endorsement on Defendants' (Delaney and Celler) Affidavit and Notice of Motion permitting said Defendants to amend answers—Returnable 4/19/73.	80
12– 4–73	Filed Affidavit of Donald Ruby in answer to Defendants' motion to amend.	81
12–13–73	Affidavit of Donald N. Ruby dated December 12, 1973.	82
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6– 2–75	Filed Stipulation and Order extending to 6/10/75 for reargument re: Plaintiffs' motion for class action determination.	100
6– 9–75	Filed Defendants Oppenheimer Management Corporation et al.'s, Notice of Motion to Reargue Class Action Motion.	101
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6–20–75	Filed Defendants Oppenheimer Management Corporation et al., answering memo re Plaintiffs' motion for re-argument.	109
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10–28–75	Filed Defendants', Oppenheimer Management Corp., et al., Notice of Appeal to USCA from order dated 9/30/75 and entered 10/1/75.	115
10–28–75	Filed Defendants', E. T. Delaney and E. Celler's Notice of Appeal to USCA from order dated 9/30/75.	116
10–30–75	Filed Defendant, Oppenheimer Fund, Inc., Notice of Appeal to USCA, from Order filed October 1, 1975.	117
10–24–75	Filed Plaintiffs further Answers to Interrogatories.	118
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11–13–69	Answers of Defendant Oppenheimer Fund, Inc. to Interrogatories.	130
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UNITED STATES COURT OF APPEALS

DOCKET ENTRIES

No. 75-7608

10–31–75 Filed copies of docket entries and notice of appeal (Delaney and Celler)

10–31–75 Filed copies of docket entries and notice of appeal (Oppenheimer Fund, Inc.)

10–31–75 Filed copy of notice of appeal (Oppenheimer Management Corp., Oppenheimer & Co., Leon Levy and Jack Nash)

11–24–75 Filed record (original papers of district court)

12–10–75 Filed exhibit volumes, (3cc.)

12–29–75 Filed designation of additional parts of record to be included in appendix, appellees, w/pfs

1– 9–76 Filed brief, appellants, with proof of service (Oppenheimer Management Corp., Oppenheimer & Co., Levy and Nash) (& in 75-7610, 75-7611)

1– 9–76 Filed brief, appellants, with proof of service (Oppenheimer Fund, Inc.) (& in 75-7610, 75-7611)

1– 9–76 Filed brief, appellants, with proof of service (Delaney and Celler) (& in 75-7610, 75-7611)

1– 9–76 Filed joint appendix, with proof of service

2–23–76 Filed brief, appellees, w/pfs

3–15–76 Filed reply briefs, appellant, pfs (Delaney and Celler)

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3–15–76 Filed reply briefs, appellant, pfs (Oppenheimer Management Corp., et al)

5– 5–76 Argument heard (By: Mulligan, Hayes, C.JJ., Palmieri, D.J.)

6–30–76 Order affirmed in part, reversed in part, Palmieri, J.D. (& in 75-7610, 75-7611)

6–30–76 Dissenting in part in separate opinion, Hays, CJ (& in 75-7610, 75-7611)

6–30–76 Filed judgment (& in 75-7610, 75-7611)

7–13–76 Filed order granting leave to file petition for rehearing and rehearing en banc by 7-21-76

7–21–76 Filed petition for rehearing and rehearing en banc, appellee, pfs

9–14–76 Filed order granting petition for rehearing en banc; appellant's briefs by 10-5-76; appellee's briefs by 10-19-76; appellant's reply briefs by 10-22-76; action will be deemed submitted on 10-22-76

9–22–76 Filed motion to file an amicus curiae brief by 10-22-76, w/pfs (American College of Trial Lawyers)

9–24–76 Filed affidavit in opposition to motion to file an amicus brief

9–27–76 Filed order granting leave to file an amicus curiae (American College of Trial Lawyers) by 10-12-76

10– 5–76 Filed 25 copies brief, appellants, w/pfs (on rehearing) (Oppenheimer Management Corp.,

Oppenheimer & Co., Leon Levy and Jack Nash)

10– 5–76 Filed 25 copies brief, appellants, w/pfs (on rehearing) (Edmund T. Delaney and Emanuel Celler)

10– 5–76 Filed 25 copies brief, appellant, w/pfs (on rehearing) (Oppenheimer Fund, Inc.)

10–12–76 Filed amicus curiae brief, pfs (American College of Trial Lawyers)

10–19–76 Filed 25 copies brief, appellees, w/pfs (on rehearing)

10–22–76 Filed 25 copies reply brief, appellants, w/pfs (on rehearing) (Oppenheimer Management Corp., Oppenheimer & Co., Leon Levy and Jack Nash)

10–22–76 Filed 25 copies reply brief, appellant, w/pfs (on rehearing) (Oppenheimer Fund, Inc)

10–22–76 Filed 25 copies reply brief, appellants, w/pfs (on rehearing) (Edmund T. Delaney and Emanuel Celler)

10–22–76 Action Submitted (before: Kaufman, Ch.J., Hays, Feinberg, Mansfield, Mulligan, Oakes, Timbers, Gurfein, Van Graafeiland, Meskill, CJJ) (& in 75-7610, 75-7611)

6–22–77 On Rehearing en banc, Judgment affirmed, Hays, CJ (& in 75-7610, 75-7611)

6–22–77 Dissenting in Separate Opinion, Mulligan, CJ (& in 75-7610, 75-7611)

6–22–77 Filed judgment

7– 6–77 Filed motion to stay the mandate, w/pfs, appellants

8– 4–77 Filed order granting stay of mandate pending application to Supreme Court for writ of certiorari

9– 6–77 Filed notice of filing of petition for writ of certiorari (SC#77-335)

11– 7–77 Filed certified copy of order of Supreme Court granting petition for writ of certiorari (SC #77-335)

Complaint

No. 69 Civ. 1242

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IRVING SANDERS,

Plaintiff,

—VS.—

LEON LEVY, JACK NASH, EDMUND T. DELANEY, EMANUEL CELLER, ERIC HAUSER, JOSEPH M. MCDANIEL, JR., SIDNEY M. ROBBINS, OPPENHEIMER MANAGEMENT CORPORATION, OPPENHEIMER & COMPANY, and OPPENHEIMER FUND, INC.,

Defendants.

Plaintiff by Wolf Popper Ross Wolf & Jones as attorneys for his complaint herein alleges upon information and belief, except as to Paragraph "1" which he alleges upon knowledge:

1. Plaintiff Irving Sanders made the following purchases of shares of Oppenheimer Fund, Inc., subsequent to March 15, 1968: 6.526 shares at a price of $7.24 per share on March 29, 1968; 5.657 shares at a price of $8.22 per share on May 1, 1968; 5.607 shares at a price of $8.56 per share on May 28, 1968; 4.196 shares at a price of $8.94 per share on June 21, 1968; 5.456 shares at a price of $8.66 per share on June 28, 1968; 5.72 shares at a price of $8.26 per share on July 30, 1968; 5.585 shares at a price of $8.46 per share on August 29, 1968; 5.059 shares at a price of $9.34 per share on September 27, 1968; 5.053 shares at a price of $9.35 per

share on October 31, 1968; 4.609 shares at a price of $10.09 per share on December 5, 1968; 4.817 shares at a price of $9.81 per share on January 3, 1969; and 4.984 shares at a price of $9.63 per share on January 29, 1969.

2. Plaintiff brings this action representatively on behalf of himself and all other persons similarly situated who purchased shares of Oppenheimer Fund, Inc. subsequent to March 15, 1968. The aforesaid purchasers of shares of Oppenheimer Fund, Inc. constitute a class so numerous that joinder of all members is impractical. There are questions of law or of fact common to the class. The claims of the plaintiff are typical of the claims of the class and the plaintiff will fairly and adequately protect the interests of the class.

3. The acts complained of herein constitute violations of Sections 12 (2) and 17 of the Securities Act of 1933 (15 U.S.C. §§ 77l and 77q, Section 10 (b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j(b)) and Rule 10b-5 promulgated thereunder by the Securities & Exchange Commission (17 CFR 240.10b-5), Sections 22, 30 and 37 of the Investment Company Act of 1940 (15 U.S.C. §§ 80a-22, 80a-29, and 80a-36) and Rules promulgated thereunder by the Securities & Exchange Commission. This Court has jurisdiction of this action under Section 27 of the Securities Exchange Act (15 U.S.C. § 78aa) Section 44 of the Investment Company Act (15 U.S.C. § 80a-43) Sections 1331 and 1337 of the Judicial Code (28 U.S.C. §§ 1331 and 1337). In addition, jurisdiction is based on the doctrine of pendent jurisdiction.

4. Oppenheimer Fund, Inc. (hereinafter referred to as the "Fund") is an open-end diversified investment company

of the management type, incorporated under the laws of the State of New York, with its principal place of business at 5 Hanover Square, New York, New York. The Fund is registered under the Investment Company Act of 1940. The shares of the Fund have been offered for sale and have been sold to the public on a continuous basis since March 15, 1968. The shares may be purchased at the public offering price which allegedly represents the net asset value of said shares plus a stated sales charge. As of December 31, 1968, there were 26,741,767 shares of the Fund issued and outstanding of which more than 5,000,000 shares were issued subsequent to March 15, 1968. Each share is entitled to one vote.

5. The individual defendants are the directors of the Fund.

6. Oppenheimer Management Corporation (hereinafter referred to as "Management Corporation") is a corporation organized under the laws of the State of New York with its principal place of business at 20 Exchange Place, New York, New York. The Management Corporations acts as an Investment Adviser to the Fund and as general distributor of the Fund shares.

7. Oppenheimer & Co. is a partnership organized under the laws of the State of New York, having its principal place of business at 5 Hanover Square, New York, New York. It is a member firm of the New York Stock Exchange. Oppenheimer & Co. owns approximately 82% of the outstanding stock of the Management Corporation including all of the voting stock of the Management Corporation. The remaining approximately 18% of the outstanding stock of the Management Corporation is owned by members of the

immediate families of certain partners or former partners of Oppenheimer & Co. who are not personally active in the business of the Management Corporation.

8. Oppenheimer & Co. is the largest holder of shares of the Fund. Oppenheimer & Co., its individual partners, the Management Corporation and the directors and officers of the Fund and their families own approximately 85,292 shares of the Fund. In addition, Oppenheimer & Co. own, of record, 13,032 shares as nominees for its clients.

9. All officers of the Fund are either partners or employees of the Management Corporation or Oppenheimer & Co.

10. Defendant Leon Levy, who is a director and president of the Fund, is a partner of Oppenheimer & Co. and a director of Oppenheimer Management Corporation. Defendant Jack Nash, who is a director of the Fund, is a partner of Oppenheimer & Co. and a vice-president and secretary of Oppenheimer Management Corporation. Defendant Edmund T. Delaney, who is a director of the Fund, is a partner in the law firm which is counsel for the Fund.

11. The Fund's investments are managed by the Management Corporation under the provisions of a management agreement between the Fund and the Management Corporation. The Fund pays a management fee to the Management Corporation which is divided into two parts: a basic fee based on net asset value plus a fee based on investment performance. The basic fee is payable monthly and is computed on the net asset value of the Fund as of the close of business each day. The performance fee is computed each year by comparing the prior year's performance of the Fund with the Standard & Poor's composite stock price

Index for 500 stocks for the same period. A performance fee will be paid to the Management Corporation when the Fund outperforms the Index. If the performance of the Fund does not equal the Index performance for the year, the Management Corporation must give the Fund a refund.

12. On or about March 15, 1968, the defendants (other than the Fund) directly and indirectly caused the Fund to file a prospectus for the sale of shares of the Fund and thereafter said defendants caused to be sold shares in the Fund by means of said prospectus dated March 15, 1968 and said prospectus, as revised, dated September 3, 1968, by the use of the mails and other instrumentalities in interstate commerce.

13. The aforesaid prospectus and said prospectus, as revised, were false and misleading in that they omitted or failed to state the following material facts which were necessary in order to make the statements, contained in said prospectus and said prospectus, as revised, in light of the circumstances under which they were made, not misleading:

A. That the Fund would invest in restricted securities which are commonly referred to as "letter of investment securities";

B. That the following special factors should be considered in connection with the purchase of restricted securities by the Fund:

1. The Fund will not be able to publicly sell its restricted securities without first registering them under the Securities Act of 1933.

2. To realize the benefit from the difference between the purchase price of restricted securities and

the market price of freely marketable securities of the same class, such restricted securities must be sold to the public after registration under the Securities Act of 1933.

3. The process of preparing a registration statement for restricted securities and having it become effective under the Securities Act of 1933, may involve a considerable period of time.

4. A considerable period of time may elapse between the time a decision is made to sell restricted securities and the time when the sale may actually be made.

5. The Fund may be unable to sell restricted securities to the public when it wishes to do so because registration under the Securities Act of 1933 may not have become effective.

6. The Fund's decision to sell restricted securities may be based on factors other than strictly investment considerations and the Fund may be precluded from selling its securities at the most opportune time.

7. The Fund is likely to incur higher costs in the sale of restricted securities than would be incurred if such securities had been readily marketable.

8. The sale of restricted securities will in most cases require the service of an underwriter. As a result, in most cases the Fund will receive from the sale of restricted securities a net price below the market price of unrestricted securities of the same class.

9. Investment in restricted securities involves greater risk than investment in other securities.

14. Subsequent to March 15, 1968, the defendants directly and indirectly caused the Fund to purchase various restricted securities including the following: 50,000 shares of Unexcelled, Inc.; 28,000 shares of Trans-lux Corp.; 5,000 warrants of Saxon Paper Corp.; $1,000,000 of Saxon Industries Senior Subordinated Convertible Notes; $2,000,000 of U.S. Financial Convertible Subordinated Notes; 496,000 warrants of Gulf & Western Industries; and 47,000 shares of Downe Communications, Inc.

15. During the period from March 15, 1968 to date, the defendants other than the Fund, singly and in concert, have violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 promulgated thereunder in that by the use of the mails and instrumentalities of interstate commerce, and in connection with the purchase and sale of shares of the Fund, they have directly and indirectly employed devices, schemes and artifices to defraud; they have made untrue statements of material facts, or have omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading and they have engaged in acts, practices and a course of conduct which was intended to and did operate as a fraud upon the plaintiff and other persons similarly situated.

16. As part of the aforesaid acts and transactions referred to in Paragraph 15 above, said defendants caused the Fund to file the aforesaid prospectus dated March 15, 1968 and said prospectus as revised September 3, 1968, which were false and misleading as aforesaid.

17. As part of the said acts and transactions, said defendants pursuant to a common plan and scheme caused the Fund to purchase restricted securities as referred to in Paragraph 14 above.

18. As part of the said acts and transactions, said defendants pursuant to a common plan and scheme caused the assets of the Fund and most particularly the restricted securities or letter of investment securities of the Fund to be valued at a false, inflated and exaggerated amount on the books and records of the Fund.

19. As part of the said acts and transactions, said defendants pursuant to a common plan and scheme caused the Fund to issue periodic and annual reports which were false and misleading in that the aforementioned restricted securities were evaluated in said reports at a false, inflated and exaggerated amount.

20. As part of the said acts and transactions, said defendants caused the Fund to pay to the Management Corporation excessive fees under the management agreement in that said fees were based upon false, inflated and exaggerated net asset values and a false, inflated and exaggerated investment performance. Said actions on the part of the defendants also constituted an unlawful and wilful conversion by said defendants of the monies, funds, properties and assets of the Fund in violation of Section 37 of the Investment Company Act.

21. As a result of the foregoing, plaintiff and all other persons similarly situated, in reliance upon the evaluation by said defendants of the assets of the Fund and upon the aforesaid prospectuses and other reports caused by said

defendants to be issued by the Fund, were fraudulently caused by pay false, inflated and exaggerated amounts for their shares of the Fund, which amounts did not truly reflect the net asset value of said shares of the Fund.

22. The aforesaid conduct of said defendants constituted a gross fraud and a violation of their fiduciary duties to the plaintiff and to other persons similarly situated and was in wanton disregard of the damage or injury to plaintiff and all other persons similarly situated.

23. By reason of the foregoing acts of said defendants, the plaintiff and all other persons similarly situated who purchased shares of the Fund since March 15, 1968 have been damaged in an amount in excess of $1,000,000.

COUNT TWO

Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 and 3 through 20 with the same force and effect as if set forth at length herein.

24. Plaintiff brings this action derivatively in the right of and for the benefit of the Fund.

25. Plaintiff has been the owner of shares of the Fund at the time of the transactions complained of herein and continuously to date.

26. This action is not brought collusively to confer jurisdiction on this Court which it otherwise would not have.

27. As part of the aforesaid acts and transactions, defendants Management Corporation, Oppenheimer & Co. and Levy, Nash and Delaney failed to disclose to other directors

of the Fund the true value of the restricted securities purchased by the Fund as aforesaid.

28. As a result of the foregoing acts, said defendants have caused the Fund to redeem shares of the Fund for false, inflated and exaggerated amounts, which amounts did not truly reflect the net asset value of said shares of the Fund.

29. By reason of the foregoing acts, the Fund has been damaged in an amount in excess of $1,000,000.

30. The aforesaid conduct of the defendants constituted a gross fraud and a violation of their fiduciary duties to the Fund and evidenced a complete indifference to their obligations to the Fund, and was in wanton disregard of the damage or injury to the Fund.

31. By reason of the foregoing acts, Management Corporation, Oppenheimer & Co. and some of the individual defendants have made substantial profits and the Fund has suffered substantial damage. The precise amount of said profits and damages are unknown to plaintiff and can be determined only upon an accounting in this action.

32. By reason of the premises, the investment advisory contract and the general distribution contract between the Fund and the Management Corporation is illegal and void under Section 47(b) of the Investment Company Act.

33. A. Demand on the Board of Directors of the Fund to bring this action would be futile since all of the members of the Board of Directors participated in, authorized or acquiesced in the actions and transactions complained of

herein. They have taken no steps to prevent any of the wrongs complained of or to seek redress therefor. Furthermore, the members of the Board of Directors are themselves defendants in this action. Any demand upon them to redress the wrongs herein complained of would, in effect, constitute a demand that they bring the action against themselves and would have been futile.

B. Demand upon the stockholders of the Fund to bring this action is unnecessary and would be futile because

(1) under the Charter and By-laws of the Fund, the management of its affairs including the bringing of suits is entrusted to the Board of Directors and not the stockholders. The stockholders cannot by resolution or otherwise require the Fund or its Board of Directors to bring action.

(2) A stockholder resolution demanding the bringing of a suit would be futile since the control of the action would be in the hands of the very persons who are alleged to be wrongdoers and cannot properly be prosecuted by them.

WHEREFORE, plaintiff demands judgment as follows:

A. Holding all of the defendants other than the Fund jointly and severally liable for all damages which the plaintiff and all other persons similarly situated have sustained by virtue of the acts and transactions complained of in Count One herein;

B. Holding all of the defendants other than the Fund jointly and severally liable for all of the damages which

have been sustained by the Fund by virtue of the acts and transactions complained of in Count Two herein;

C. Requiring the defendants other than the Fund jointly and severally to account to the Fund for all profits made by them as a result of the acts and transactions complained of in Count Two herein;

D. Declaring the Investment Advisory Agreement or any extentions or modifications thereof between the Management Corporation and the Fund to be null and void;

E. Awarding to plaintiff the costs and disbursements of this action including reasonable attorneys' fees and accountants' fees;

F. Granting such other and further relief as to this Court may seem just and proper.

WOLF POPPER ROSS WOLF & JONES

By: /s/ DONALD N. RUBY
A Member of the Firm
Attorneys for the Plaintiff
Office and P.O. Address
845 Third Avenue
New York, N.Y. 10022
PL. 9-4600

Complaint

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.:*

IRVING SANDERS, being duly sworn, deposes and says that he is the plaintiff in the within action; that he has read the foregoing complaint and knows the contents thereof; that said complaint is made on information and belief but that he believes it to be true.

/s/ IRVING SANDERS
IRVING SANDERS

[Sworn to March 25, 1969]

Complaint

No. 69 Civ. 2029

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EGON TAUSSIG,

Plaintiff,

—against—

SIDNEY M. ROBBINS, ERIC HAUSER, MURRAY GRAHAM, EMANUEL CELLER, JOSEPH M. MCDANIEL, JR., JACK NASH, EDMUND T. DELANEY, LEON LEVY, OPPENHEIMER MANAGEMENT CORPORATION, OPPENHEIMER & COMPANY, and OPPENHEIMER FUND, INC.,

Defendants.

Plaintiff Demands Trial by Jury

Plaintiff, by his attorneys, Leibowitt, Milberg, Weiss & Fox, for his complaint herein, alleges the following on information and belief except as to paragraphs 1, 2, 3 and 4(b), all of which are alleged on knowledge.

COUNT I

1. Plaintiff owns shares of the capital stock of Oppenheimer Fund, Inc. (hereinafter "The Fund") and was such shareholder at the times of the transactions with which this complaint deals.

2. Plaintiff brings this action derivatively in behalf of himself and all other Fund stockholders similarly situated and in behalf of and in the right of the Fund.

3. The action is not brought collusively to confer on this Court jurisdiction which it would not otherwise have.

4. (a) The action arises under the Investment Company Act of 1940 ("Investment Company Act"), the Securities Exchange Act of 1934, as amended ("Exchange Act") and the Securities Act of 1933 as amended ("Securities Act") and the rules and regulations promulgated under each of the aforesaid statutes. Jurisdiction is based on Section 44 of the Investment Company Act, Section 27 of the Exchange Act and Section 22 of the Securities Act and on principles of pendent jurisdiction.

(b) Plaintiff is a citizen of the State of New York.

(c) The transactions hereinafter alleged occurred in substantial part in the State of New York.

5. The Fund is a corporation organized under the laws of New York. It is an open-end non-diversified management investment company registered as an investment company under the Investment Company Act. It has its principal place of business in the Southern District. At September 31, 1968, 24,816,792 shares were issued and outstanding. The Fund has many thousands of shareholders who are located throughout the United States of America and abroad.

6. (a) At all relevant times Oppenheimer Management Corporation ("Manager") was a New York corporation. It has its principal place of business in the Southern District. Oppenheimer & Company, a New York partnership ("Partnership") owned over 80% of the stock of Manager. This stock included 100% of the voting stock. The balance of Manager's stock is owned by members of the family of certain partners of Partnership or of former partners.

Partnership, individual partners, Manager, directors and officers of the Fund and their families, and Oppenheimer as record owner for its customers between them own in excess of 98,000 shares of the Fund.

7. During all relevant times the following defendants held and hold the following officerships and directorships and interests in the Fund, Manager and Partnership:

	The Fund	*Partnerships*	*Manager*
Sidney M. Robbins	Director		
Eric Hauser	Director		
Murray Graham	Director		
Emanuel Celler	Director		
Joseph M. McDaniel, Jr.	Director		
Jack Nash	Director	Partner	Vice President & Secretary
Edmund T. Delaney	Director		
Leon Levy	President & Director	Partner	Director

8. At all relevant times the method of operation and the relationships between the Fund, Partnership and Manager were as follows:

(a) Manager acted and acts as manager of the Fund under an Investment Advisory Agreement with the Fund under which the Fund's investment portfolio was managed by Manager and it furnished at its own expense investment analysis and statistical and research information and other information to the Fund. Manager's compensation for its services as investment advisor, denominated as a management fee, was twofold. It received fixed percentages of ½ of 1% computed daily on the first $150,000,000 of net asset value and it received a fee each year if for the prior year it

had bettered the price performance of the Composite Stock Price Index for 500 Stocks maintained by Standard & Poor Corp. If the Fund's asset growth did not equal the performance of said index, Manager was required to make a refund to the Fund.

(b) A Distribution Agreement between Manager and the Fund granted Manager the right to act as exclusive distributor and sole principal underwriter of the shares of the Fund, for which Manager received and retained a substantial portion of the sales commissions.

9. For the purpose of fostering and serving their own interests at the expense of the Fund, the defendants entered into a common plan and conspiracy, in violation of the fiduciary obligations to the Fund and its shareholders imposed on them by virtue of the individual defendants' positions as directors of the Fund, the relationship between the Manager and the Fund, and the relationship between the Partnership and the Fund through the domination and control of the Manager by the Partnership, by causing the Fund to commit the following acts of omissions and commissions:

(a) They caused the Fund to purchase securities whose sale and distribution have been restricted by the Securities Act (Restricted Securities) and to agree to purchase said securities subject to the said restrictions. The said securities were purchased at discounts from the market value of securities of the same companies which were not similarly restricted and which could be sold and distributed freely by and to the public (Free Securities); that the said Restricted Securities were included in the net asset value of the shares of the Fund and not at the purchase price, but, in the

case of Free Securities of the same company traded on a National Exchange, at the last reported sale and as to over the counter securities at the last quoted bid price of Free Securities of the same company. Such values at which the Restricted Securities were carried did not truly reflect the actual value of the said Restricted Securities in that, under the investment and speculative climate which then prevailed and still prevails, public knowledge that the Fund had purchased such securities would tend to drive the market value of the Free Securities even higher. Further, the value at which the Restricted Securities were carried in the assets of the Fund, did not reflect their true value, but were excessive values since if the Fund was required to or decided to sell the said Restricted Securities, they could not be freely liquidated because they could only be sold to the public after registration under the Securities Act, the time which might elapse between the decision to sell said Restricted Securities and the effective date of such registration might involve a change of circumstances which would reduce the proceeds of the sale of said securities, the public knowledge that the Fund had offered said securities for registration would tend to drive the price down, the cost of registration and sale of such Restricted Securities, particularly on the Over-the-Counter market, would be far in excess of the cost of sale of Free Securities, and a sale of such Restricted Securities without registration might be difficult in that purchasers of large blocks of such securities could not readily be found.

10. The holding of such Restricted Securities by the Fund, when combined with a substantial run-up in the

price of the Free Securities of the same companies, therefore created a spurious appearance of better price performance for the Fund and a spurious increase in the net asset value of the Fund as reported to the public and to its shareholders. This false facade of superior performance also increased the rate of sale of Fund Shares to the public.

11. By reason of the foregoing the defendants were enabled to increase the commissions which the Manager derived from expanded sales, and to increase the basic management fee and in addition that aspect of the management fee which was based on comparative performance with the Standard & Poor Composite Price Index above alleged.

12. The defendants caused the Fund, in or about March of 1968 to offer shares for sale to the public by means of a Prospectus dated March 15, 1968 and thereafter revised under date of September 3, 1968, (hereafter collectively described as "Prospectus") which was disseminated to the public by the use of the mails and other instrumentalities in interstate commerce. The aforesaid Prospectus and the revised version thereof were false and misleading, in that they omitted or failed to state material facts which were necessary in order to make statements contained therein, in the light of the circumstances under which they were made, not misleading, in that they failed to set forth the characteristics of and the various considerations in connection with such Restricted Securities, as alleged in paragraphs "9" and "10" above.

13. Said acts and omissions, including the issuance of said Prospectus, constituted violations of Section 10(b) of

the Exchange Act and Rule 10b-5 issued thereunder, and said acts of omission and commission were performed in connection with the purchase and sale of shares of the Fund, and constituted devices, schemes and artifices to defraud, constituted the making of untrue statements of material facts or omissions of said material facts necessary in order to make other statements made, not misleading, and were also acts, practices and a course of conduct which tended to and did operate as a fraud upon the Fund, and its shareholders, including the plaintiff.

14. The aforesaid acts and omissions were also violations of the fiduciary obligations owed by the defendant directors to the Fund and its Shareholders, constituted breaches of their duties of loyalty to the Fund, and were engaged in recklessly and with wanton disregard of the interests of the Fund and its Shareholders and to further the interests of the defendants, Oppenheimer Management Corporation and Oppenheimer & Company.

15. The aforesaid acts of the defendants other than the Fund constitute a breach of the investment advisory contract and general distribution contract between the Fund and Oppenheimer Management Corporation, and all payments made to the said Oppenheimer Management Corporation after the occurrence of the said breaches should be repayable to the Fund.

16. As a result of the foregoing the Fund sustained damage in the following ways:

(a) The advisory fees were calculated on the inflated values of the net assets arising out of the false and misleading valuations of the Restricted Securities.

(b) When Fund shares were redeemed, the redemption value of the said Fund shares reflected the inflated value of the Restricted Securities and the Fund paid out more moneys to those shareholders who redeemed than it would have paid out otherwise;

(c) Because of the possibility of the redemptions at the inflated values, the Fund was forced to maintain a larger cash reserve, since it could not freely sell the Restricted Securities to create a cash reserve when needed, and was thereby forced to sell saleable Free Securities, or, was damaged by reason of the inability to maintain such large cash reserve to purchase Free Securities of other corporations and to realize gains and dividends therefrom.

(d) The foregoing practices constituted a conversion by the defendants of assets of the Fund in violation of the Investment Company Act.

(e) The aforesaid practices were publicly exposed and received wide pubicity in the public press including various media to which the investment public and the financial community had access. The said unfavorable publicity was damaging to the public image of the Fund.

(f) As a result of the foregoing, reports sent in by the Fund to the Securities and Exchange Commission and required by the Exchange Act, the Securities Act and the Investment Company Act were false and misleading in that they contained valuations of the Restricted Securities in inflated amounts, which did not reflect their true value, thereby exposing the Fund to liability for violation of the said Acts.

17. The foregoing practices constituted gross negligence, were in wanton and reckless disregard of the rights of the Fund and its shareholders, and were engaged in by the defendants other than the Fund for their own profit and aggrandizement, and the Manager benefited by the increase in the amount of the advisory fees, both with respect to the basic fee and the fee for performance, from the sales commissions generated by the false appearance of investment success, and the Partnership, the individual partners and their relatives, benefited from the increase in the value of their stock in the Manager. The aforesaid acts were engaged in for the said purposes and not for purposes related to the best interests of the Fund and the Fund shareholders.

18. The foregoing practices and breaches of fiduciary duty alleged above were caused, or permitted, or acquiesced in by Manager and those individual defendants who were officers, owners and directors of Manager and of the Fund, and by the Partnership, all with knowledge or notice of the facts above alleged and the illegality of the aforesaid practices and pursuant to a plan among them to benefit themselves at the expense of the Fund and its shareholders.

19. The Manager, the Partnership and certain of the individual defendants have made substantial profits by reason of the foregoing, and the Fund has suffered substantial damages.

20. In addition thereto the defendants other than the Fund by reason of the willful, reckless and wanton nature of their fraud and breach of fiduciary obligations, and their sacrifice of the interests of the Fund and its shareholders to their own interests have made themselves liable to ac-

count to the Fund for their own profits, and for the damages sustained to the Fund.

21. No demand has been made by the plaintiff upon the Fund to institute and prosecute this action against the defendants named herein, because Manager and its and the Fund directors are named as defendants herein, and they have participated in, acquiesced in or have profited from, and are personally liable for the wrongs complained of in this action; and any demand upon them to institute such an action would have been futile and useless in that thereby said defendants would have been required to institute an action against themselves and any action so instituted by them would be friendly to the defendants and hostile to the interests of Fund and its shareholders.

22. No demand has been made upon the shareholders of the Fund to institute and prosecute this action against the defendants named herein, because the wrongs alleged are in violation of Federal statute, are illegal, and are not subject to ratification by the shareholders of Fund; and under New York law the directors of the Fund and not the shareholders, are vested with the management of Fund including the institution of all actions in behalf of Fund; and a resolution by the shareholders of Fund directing the institution of this action would be futile and useless because the prosecution of the action would be placed in the control of Manager and its directors. Furthermore, there are many thousands of public shareholders of the Fund scattered throughout the United States and abroad and it would be impracticable to bring them all before the court and the solicitation of proxies from such a large and scattered number of shareholders would place an unreasonable burden and expense on the plaintiff, and extended delays

would result which would be harmful and seriously prejudicial to the prosecution of this action, and might result in the application of statutes of limitations to bar this action.

23. Plaintiff has no adequate remedy at law.

24. Plaintiff will fairly insure the adequate representation of the similarly situated shareholders of the Fund and of the Fund.

COUNT II

25. The plaintiff repeats and realleges, each and every allegation contained in paragraphs 1 and 3 to 20 inclusive with the same force and effect as though fully set forth herein.

26. Plaintiff brings this cause of action on a representative basis on his own behalf and on behalf of all other persons similarly situated who purchased Fund shares since March 15, 1968. The said persons constitute a class which is so numerous that joinder of all of its members would be impracticable. Questions of law and fact exist common to the class and the claims of this plaintiff are typical of the claims of the class and he will fairly and adequately represent and protect the interests of the class.

27. The Prospectus described in paragraph "11" in addition to the misleading statements and omissions alleged therein omitted to state that the Fund intended to or had invested in Restricted Securities, and did not adequately or clearly set forth that the risks of investment in such Restricted Securities were greater than those involved in investments in Free Securities.

28. The plaintiff, on or about December 24, 1968, purchased 2,302.026 shares of the Fund at $10.86 per share.

29. In making the aforesaid purchase the defendant relied on the said Prospectus.

30. The members of the class whom plaintiff herein represents, also purchased shares of the Fund relying upon the said Prospectus.

31. The defendants other than the Fund, when they caused the said Prospectus to be issued, intended that the public, including the plaintiff, would rely on the information set forth therein and intended that members of the public including the plaintiff would purchase such shares in reliance thereon.

32. The plaintiff and the said members of the class were damaged by reason of the premises, in that the prices paid by them for their shares of the Fund, were inflated and in excess of the true value thereof and did not truly reflect the net asset value of the shares of the Fund at which such purchases were required to be made.

33. The plaintiffs and all other persons similarly situated have sustained substantial damages and the defendants other than the Fund are liable to them therefor, and are also liable to the plaintiffs and the class for punitive damages.

WHEREFORE, the plaintiff demands judgment as follows:

(a) Requiring all defendants other than the Fund to account jointly and severally to the Fund, for all damages sustained by the Fund, and for all profits

made by them as a result of the acts and transactions complained of in Count I herein;

(b) Declaring the investment advisory agreement and the distribution contract and any extensions or modifications of said agreement between Oppenheimer Management Corporation and the Fund to be null and void; and directing defendants other than the Fund to account to the Fund for all fees received thereunder;

(c) Declaring that the cause of action alleged in Count II hereof is a class action under the provisions of Rule 23 of the Federal Rules of Civil Procedure;

(d) Declaring that all of the defendants are jointly and severally liable for all damages which plaintiff and all other persons similarly situated have been caused by virtue of the acts and transactions complained of in Account [*sic*] II hereof, together with punitive damages;

(e) Awarding to the plaintiff the costs and disbursements of this action including reasonable attorneys' fees and accountants' fees;

(f) Granting such other and further relief as to this Court may seem just and proper.

LEIBOWITT, MILBERG, WEISS & FOX

By /s/ LAWRENCE MILBERG
Member of the Firm
Attorneys for Plaintiff
Office & P. O. Address
2 Pennsylvania Plaza
New York, N. Y. 10001

Complaint

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.:*

EGON TAUSSIG, being duly sworn, deposes and says that deponent is the plaintiff in the within action; that deponent has read the foregoing complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

/s/ EGON TAUSSIG
Egon Taussig

[Sworn to May 7, 1969]

Complaint

No. 69 Civ. 2642

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL SHAEV and RITA SHAEV,

Plaintiffs,

—against—

ERIC HAUSER, EMANUEL CELLER, EDMUND T. DELANEY, LEON LEVY, JACK NASH, JOSEPH M. McDANIEL, JR., SIDNEY M. ROBBINS, OPPENHEIMER MANAGEMENT CORPORATION, OPPENHEIMER & COMPANY and OPPENHEIMER FUND, INC.,

Defendants.

Plaintiffs Demand Trial by Jury

Plaintiffs, by their undersigned attorney, for their complaint, allege upon information and belief, except paragraph "14" hereof, which is alleged upon knowledge:

1. (a) Jurisdiction herein is based upon Section 22 of the Securities Act of 1933, ("1933 Act"), Section 27 of the Securities Exchange Act of 1934 ("1934 Act") and Section 44 of the Investment Company Act of 1940 ("1940 Act").

(b) The action arises under Sections 12(2) and 17 of the 1933 Act, Section 10(b) of the 1934 Act and Rule 10b-5 of the Rules under the 1934 Act, Sections 22, 30 and 37 of the 1940 Act and the Rules thereunder.

(c) This action is not a collusive one to confer on the Court jurisdiction it would not otherwise have.

2. (a) Defendant Oppenheimer Fund, Inc. (the "Fund") is a corporation duly organized and existing under the laws of New York.

(b) The Fund is registered under the 1940 Act as an open-end diversified investment company.

(c) The shares of the Fund are offered for sale and sold to the public at a price which is alleged to represent the net asset value thereof to which is added a sales charge.

(d) On December 31, 1968, 26,741,767 shares of the Fund were issued and outstanding, of which in excess of 5,000,000 shares have been issued since March 15, 1968.

3. (a) Oppenheimer Management Corporation (the "Manager") is a corporation duly organized and existing under the laws of New York.

(b) The Manager has acted and continues to act as the Investment Adviser to the Fund and the supervisor of its portfolio pursuant to a written contract which provides for compensation to the Manager payable monthly based upon a percentage of net assets and in addition annually upon performance of the Fund as compared with the Standard & Poor's Composite Stock Price Index of 500 stocks (the "Index"). Such performance fee is added to the basic fee if the Fund outperforms the Index and the basic fee is reduced in the event the Index outperforms the Fund.

(c) The Manager has acted and continues to act as underwriter of the Fund's shares receiving as commissions a sales charge at a rate not in excess of 8½% of the offering price. The Manager also acts as Sponsor and General Distributor for the Oppenheimer Systematic Capital Accumulation Program.

4. (a) Defendant Oppenheimer & Co. (the "Broker") is a New York partnership and is a member of the New York Stock Exchange.

(b) The Broker owns 11,000 shares of the voting stock of the Manager which constitutes approximately 82% of the outstanding stock of the Manager. The non voting stock of the Manager is owned principally by the members of the families or partners or former partners of the Broker.

(c) The Broker owns approximately 33,000 shares of the Fund's stock and is the largest holder of shares of the Fund. Together with the Manager, the officers and directors of the Fund, the partners of the Broker and the members of their families, they own in excess of 80,000 shares of the Fund's shares. In addition, the Broker is the record owner of approximately 13,000 shares owned by its customers.

(d) The Broker acts as principal broker for the Fund in the purchase and sale of the Fund's portfolio securities.

5. (a) The individual defendants are all of the directors of the Fund.

(b) Defendant Leon Levy is President of the Fund and is a partner of the Broker and President and a Director of the Manager.

(c) Defendant Edmund T. Delaney is a member of the law firm which is counsel for the Fund.

(d) Defendant Jack Nash is a partner of the Broker and is a Vice President and Assistant Secretary of the Manager.

(e) All the officers of the Fund are either partners or employees of the Broker or officers or employees of the Manager.

6. Commencing with March 15, 1968 and continuing to the present, the defendants other than the Fund in connection with the sale and purchase of shares of the Fund and by the use of the mails and instrumentalities of interstate commerce, have directly and indirectly employed devices, schemes and artifices to defraud; have made untrue statements of material facts, or have omitted to state material facts in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and, have engaged in acts, practices and a course of conduct which was intended to and did operate as a fraud upon the plaintiff and other similarly situated persons, in violation of Sections 12(2) and 17 of the 1933 Act, Section 10(b) of the 1934 Act and Rule 10b-5 of the Rules promulgated under the 1934 Act and Sections 22, 30 and 37 of the 1940 Act.

7. The violations hereinbefore referred to in paragraph "6" hereof were caused by the defendants, other than the Fund, by causing the Fund to issue a prospectus for the sale of the Fund's shares, dated March 15, 1968 and a revised prospectus dated September 3, 1968.

8. The aforesaid prospectus and revised prospectus were false and misleading in the following respects:

(a) They failed to disclose that the Fund would invest in restricted securities known as "investment letter securities."

(b) They failed to disclose that restricted securities purchased by the Fund could not be resold without registration under the 1933 Act.

(c) They failed to disclose that such securities could not be registered under the 1933 Act for a considerable period of time.

(d) They failed to disclose that a considerable period of time could elapse betwen such registration and any sale thereunder.

(e) They failed to disclose that the sale of restricted securities would require an underwriter and that the fees and commissions paid an underwriter would reduce the net sales to the Fund to a price lower than the market price for unrestricted stock.

(f) Restricted securities involve greater risk than unrestricted securities.

9. Subsequent to March 15, 1968 the Fund was, caused by the defendants, to purchase the following restricted securities, among others:

50,000 shares of Unexcelled, Inc.

28,000 shares of Trans-lux Corp.

5,000 warrants of Saxon Paper Corp.

$2,000,000 of Saxon Industries Senior Subordinated Convertible Notes.

$2,000,000 of U.S. Financial Convertible Subordinated Notes.

496,000 warrants of Gulf & Western Industries.

47,000 shares of Downe Communications, Inc.

10. In furtherance of the violations referred to in paragraph "6" hereof and pursuant to a common scheme and plan the defendants caused the assets of the Fund and specifically the restricted securities of the Fund to be overvalued on the books of the Fund.

11. In furtherance of the aforesaid violations and in pursuance of the aforementioned common scheme and plan the

Fund was caused to issue interim and annual reports which were false and misleading in containing overvaluations of such restricted securities.

12. In furtherance of said violations and in pursuance of the aforesaid common scheme and plan, the Fund was caused to pay excessive fees to the Manager based upon such overvalued restricted securities and constituted a conversion of assets of the Fund in violation of Section 37 of the 1940 Act.

13. In reliance upon the prospectus dated March 15, 1968 and the revised prospectus dated September 3, 1968 and financial reports issued by the Fund, the plaintiffs and other persons similarly situated purchased the Fund's shares.

14. The plaintiffs purchased 22.599 shares of the Fund on April 24, 1968 and 19.512 shares on October 1, 1968.

15. Plaintiffs bring this action on their own behalf and representatively on behalf of all other persons who purchased shares of the Fund subsequent to March 15, 1968.

16. (a) The persons similarly situated with the plaintiffs constitute a class so numerous that joinder of all members is impractical;

(b) There are questions of law or of fact common to the class;

(c) The claims of the plaintiffs are typical of the claims of the class;

(d) The plaintiffs will fairly and adequately protect the interests of the class.

17. By reason of the foregoing the plaintiffs and the other members of the class have sustained damages in the aggregate exceeding $1,000,000.

18. Plaintiffs have no adequate remedy at law.

COUNT TWO

19. Plaintiffs repeat paragraphs "1" through "14" and "18" hereof.

20. (a) Plaintiffs bring this Count derivatively in the right of and for the benefit of the Fund.

(b) Plaintiffs have been stockholders of the Fund since April 24, 1968 and have been stockholders at the time of the transactions of which they complain.

21. This action is not a collusive one to give this Court jurisdiction it would not otherwse have.

22. Defendants the Manager, the Broker, Levy, Nash and Delaney fraudulently failed to disclose to the other directors of the Fund, the true value of the restricted securities purchased by the Fund as hereinbefore set forth.

23. As a result of the foregoing fraudulent acts of the said defendants, the Fund has been caused to redeem its shares at excessive values, which values reflected the false and overvalued restricted securities heretofore referred to.

24. As a result of the fraudulent acts of the said defendants, the Fund has sustained damages in excess of $1,000,000.

25. The acts of the defendants constituted violations of the 1933 Act, the 1934 Act and the Rules thereunder and the 1940 Act and constituted a violation of their fiduciary duties to the Fund.

26. As a result of their acts, the Manager, Broker and a number of the individual defendants have made large profits and caused substantial damage to the Fund, the exact amount of such profits and damage being presently unknown to plaintiffs.

27. As a result of the illegal and fraudulent acts of the defendants, the investment advisory contract and the distribution agreement between the Fund and the Manager are illegal and void under Section 47(b) of the 1940 Act.

28. Plaintiffs have made no demand upon the Fund or the directors of the Fund to bring this action because such demand would be futile because all of the directors participated in, approved of or acquiesced in the acts and transactions complained of herein. The directors have long known of the acts hereinbefore complained of but have taken no action with respect thereto. The directors are themselves defendants in the action and any action brought by the Fund would have to be brought against them and any such action could not and would not be diligently prosecuted.

WHEREFORE, plaintiffs demand judgment as follows:

A. Finding the defendants other than the Fund jointly and severally liable for all damages which plaintiffs and other persons similarly situated have sustained as a result of defendants illegal conduct complained of in Count One herein;

B. Finding the defendants other than the Fund, jointly and severally liable to the Fund for damages sustained by it as a result of the acts complained of in Count Two;

C. Requiring the defendants, other than the Fund to account to the Fund for all their profits as a result of the acts complained of in Count Two herein;

D. Declaring the investment advisory and the underwriting agreements between the Manager and the Fund null and void;

E. Awarding plaintiffs the costs and disbursements of this action, including a reasonable allowance of counsel fees to their attorney; and

F. Granting plaintiffs such other and further relief as to this Court may seem just and proper.

/s/ ABRAHAM I. MARKOWITZ
ABRAHAM I. MARKOWITZ
Attorney for Plaintiffs
Office & P.O. Address
276 Fifth Avenue
New York, N. Y. 10001
Mu 4-4771

Complaint

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.:*

MICHAEL SHAEV, being duly sworn, deposes and says that he is one of the plaintiffs in the within action; that he has read the foregoing complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

/s/ MICHAEL SHAEV
MICHAEL SHAEV

[Sworn to June 9, 1969]

Amended Answer of Defendants Oppenheimer Management Corp., et al.

No. 69 Civ. 1242*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IRVING SANDERS,

Plaintiff,

—against—

LEON LEVY, JACK NASH, EDMUND T. DELANEY, EMANUEL CELLER, ERIC HAUSER, JOSEPH M. MCDANIEL, JR., SIDNEY M. ROBBINS, OPPENHEIMER MANAGEMENT CORPORATION, OPPENHEIMER & COMPANY, and OPPENHEIMER FUND, INC.,

Defendants.

The defendants, Oppenheimer Management Corporation, Oppenheimer & Company, Leon Levy and Jack Nash by Guggenheimer & Untermyer, their attorneys, for their amended answer to the complaint herein:

1. Admit the averments of paragraph 1 of the complaint.

2. Deny each and every averment contained in paragraphs 2 and 24 of the complaint, except admit that the action purports to be brought representatively on behalf of those of the shareholders of Oppenheimer Fund, Inc.

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* The amended answers of these defendants to the complaints filed in 69 Civ. 2029 and 69 Civ. 2642 have not been included in the appendix herein. Relevant to these proceedings, the amended answer of these defendants to each of the respective complaints does not differ in any substantial way.

(herein called the "Fund") who purchased shares of the Fund subsequent to March 15, 1968 and derivatively on behalf of the Fund.

3. Deny each and every averment contained in paragraph 3 of the complaint, except admit that the jurisdiction of this Court purports to be based upon Section 27 of the Securities Exchange Act, 15 U.S.C. §78(aa), Section 44 of the Investment Company Act, 15 U.S.C. §80a-43, Sections 1331 and 1337 of the Judicial Code, 28 U.S.C. §§1331 and 1337, and the doctrine of pendent jurisdiction.

4. Admit the averments of paragraph 4 of the complaint, except deny that the public offering price of shares is other than the net asset value of said shares plus a stated sales charge.

5. Admit the averments of paragraphs 5, 6, 7, 9, 10, 11, 25 and 26 of the complaint, except aver that defendant Jack Nash is an assistant secretary of Oppenheimer Management Corporation, not the secretary as averred in paragraph 10 of the complaint.

6. Admit the averments contained in paragraph 8 of the complaint, except that the shareholdings therein referred to were true only as of December 31, 1967.

7. Deny each and every averment contained in paragraph 12 of the complaint, except admit that the Fund filed a prospectus with the Securities and Exchange Commission for the sale of shares of the Fund which became effective on March 14, 1968, thereafter said prospectus was revised effective September 3, 1968, and that shares of the Fund

have been sold since March 15, 1968 by use of the mails and other instrumentalities in interstate commerce.

8. Deny each and every averment of paragraph 13 of the complaint, except admit that said prospectus and revised prospectus did not state the matters referred to in subdivision B of said paragraph.

9. Deny each and every averment contained in paragraph 14 of the complaint, except admit that subsequent to March 15, 1968 the Fund purchased the restricted securities therein referred to.

10. Deny each and every averment contained in paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31 and 32 of the complaint.

11. Deny each and every averment contained in paragraph 33 of the complaint except admit that the Board of Directors of the Fund would not bring this action.

FIRST AFFIRMATIVE DEFENSE

12. The Fund is an open-end diversified investment company of the management type, organized under the laws of the State of New York. The Fund's shares are registered under the Securities Act of 1933, 15 U.S.C. §§77a et seq. The Fund is registered under the Investment Company Act of 1940, 15 U.S.C. §§80a-1 et seq., and it conducts its business in compliance with said Acts and with the rules and regulations issued by the Securities and Exchange Commission thereunder.

13. The shares of the Fund are offered for sale to the public pursuant to registration statements which have duly

become effective under the Securities Act of 1933, which registration statements include detailed prospectuses which are issued at least annually by the Fund. Each year the Fund delivers to its shareholders a proxy statement in connection with the annual meeting of shareholders at which the shareholders vote for, among other things, the election of directors and approval of, among other things, the Investment Advisory Agreement between the Fund and Oppenheimer Management Corporation (hereinafter referred to as "Management Corporation").

14. All prospectuses and proxy statements of the Fund are submitted for examination and review to the Securities and Exchange Commission prior to release and distribution to prospective purchasers and holders of shares of the Fund.

15. Said prospectuses and proxy statements have at all times disclosed fully and fairly the terms of agreements between the Fund and Management Corporation, including the compensation paid by the Fund to Management Corporation for advisory and management services and the compensation paid to Oppenheimer & Co. for services, including underwriting and brokerage services. Such prospectuses and proxy statements disclose fully and fairly all material relationships among the Fund, its officers and directors, Management Corporation and Oppenheimer & Co.

16. The Fund regularly publishes and distributes to its shareholders annual, semi-annual and quarterly reports, which clearly and accurately set forth all payments made

by the Fund to Management Corporation and to Oppenheimer & Co.

17. Upon information and belief, at or prior to the time plaintiff became a shareholder of the Fund he received a copy of the then current prospectus of the Fund, and since he became a shareholder he has received copies of all annual, semi-annual and quarterly reports of the Fund.

18. The Fund's semi-annual report to its shareholders for the period ending June 30, 1968, the quarterly report for September 30, 1968, the report for year ended December 31, 1968 and subsequent reports all set forth that the Fund had acquired securities under investment letters with restrictions on transfer or resale and that the valuation thereof had been determined by the Board of Directors of the Fund.

19. At no time during the period referred to in the complaint did the value of investment letter securities of the Fund exceed 10% of the value of all of the securities of the Fund.

20. To the extent that the value of the Fund's investments in investment letter securities may be deemed material, there was fair, adequate and timely disclosure thereof to the shareholders of the Fund.

SECOND AFFIRMATIVE DEFENSE

21. Defendants repeat and reallege each of the allegations contained in paragraphs 12 through 20, inclusive, of this answer as though fully set forth at length herein.

22. Upon information and belief, at no time prior to the institution of this action did the plaintiff express to the defendants disapproval of the matters of which he now complains in the complaint herein.

23. Upon information and belief, the plaintiff and shareholders of the Fund have acquiesced in and approved the matters and transactions alleged in the complaint, received the benefits of the securities acquired by the Fund, and they have, therefore, waived the claims, if any, with respect thereto and are barred from complaining of said matters and transactions.

THIRD AFFIRMATIVE DEFENSE

24. Defendants repeat and reallege each of the allegations contained in paragraphs 12 through 23, inclusive, of this answer with the same force and effect as though set forth at length herein.

25. The prospectus of the Fund, as supplemented on September 3, 1968, set forth the extent of the Fund's investments in investment letter securities and stated that the Fund would not make any investment which would cause more than 15% of the value of its assets to be invested in securities which are subject to legal or contractual restrictions on resale or are otherwise not readily saleable.

26. Shareholders of the Fund, including plaintiff, who purchased Fund shares subsequent to receipt of the Fund's semi-annual report for the period ending June 30, 1968 or of the Fund's prospectus as supplemented on September 3, 1968 had due notice that the Fund had acquired and

might continue to acquire investment letter securities, and they are therefore estopped to assert any claims with respect to such securities acquired after such dates.

FOURTH AFFIRMATIVE DEFENSE

27. Defendants repeat and reallege each of the allegations contained in paragraphs 12 through 26, inclusive, of this answer with the same force and effect as though set forth at length herein.

28. Upon information and belief, the plaintiff does not fairly and adequately represent the interests of the shareholders of the Fund for, among other things, the following reasons:

(a) The great majority of shareholders approved the purchases of the restricted securities referred to in the complaint and the valuation thereof by the Board of Directors of the Fund;

(b) The plaintiff's claims herein involve a conflict of interest in that he seeks to recover for himself and others damages for alleged overpayments which he and others made to the Fund while at the same time he seeks to sue derivatively on behalf of the Fund to recover alleged overpayments made by the Fund to others.

29. Upon information and belief, plaintiff may not maintain this action derivatively on behalf of the Fund or representatively on behalf of the shareholders of the Fund.

Amended Answer of Defendants
Oppenheimer Management Corp., et al.

FIFTH AFFIRMATIVE DEFENSE

30. Defendants repeat and reallege each and every allegation contained in paragraphs 10 through 29, inclusive, of this answer with the same force and effect as if set forth at length herein.

31. Section 2(a)(39) of the Investment Company Act of 1940, 15 U.S.C. Section 80a-2(a)(39), provides in relevant part that with respect to assets of registered investment companies the value of the securities for which market quotations are readily available shall be the market value of such securities and the value of other securities and assets shall be the fair value as determined in good faith by the board of directors of the investment company. Rule 2a-4 of the General Rules and Regulations issued by the Securities and Exchange Commission under the Investment Company Act of 1940 provides in relevant part that in computing the price of Fund shares for the purpose of distribution, redemption and repurchase, portfolio securities for which market quotations are readily available shall be valued at current market value and other securities shall be valued at fair value as determined in good faith by the board of the directors of the Fund.

32. At all times while the transferability of the securities referred to in the complaint herein was restricted, the value of each such security for the purposes referred to in the complaint was determined in good faith by the Board of Directors of the Fund, and such value was in each case the fair value thereof, in accordance with the requirements of the aforesaid statute and Rule.

Amended Answer of Defendants
Oppenheimer Management Corp., et al.

SIXTH AFFIRMATIVE DEFENSE

33. Defendants repeat and reallege each and every allegation contained in paragraphs 10 through 32, inclusive, of this answer with the same force and effect as if set forth at length herein.

34. Each of the claims set forth in the complaint is barred by laches.

SEVENTH AFFIRMATIVE DEFENSE

35. Defendants repeat and reallege each of the allegations contained in paragraphs 12 through 20 and 30 through 32, inclusive, of their answer with the same force and effect as if set forth at length herein.

36. In Count One of the complaint herein, plaintiff alleges, among other things, that he brings this action on his own behalf and representatively on behalf of all other persons similarly situated who purchased shares of Oppenheimer Fund, Inc. (the "Fund") subsequent to March 15, 1968 (hereinafter referred to as the "Purchasing Class"), and plaintiff seeks to recover for himself and members of the Purchasing Class excessive amounts claimed to have been paid on the purchase of said shares by reason of alleged overvaluation of restricted securities in the portfolio of the Fund.

37. In Count Two of the complaint herein, plaintiff alleges, among other things, that he brings this action derivatively on behalf of the Fund to recover from defendants excessive amounts claimed to have been paid by the Fund when the Fund was required to redeem shares of

the Fund and that such excessive amounts were paid by reason of alleged over-valuation of restricted securities in the portfolio of the Fund.

38. Upon information and belief, since March 15, 1968 plaintiff and/or members of the Purchasing Class have caused the Fund from time to time to redeem some or all of their Fund shares.

39. At all relevant times, the method of valuing Fund shares for purposes of redemption was the same as the method of valuing Fund shares for purposes of sale, and if restricted securities were overvalued in connection with sale of Fund Shares as alleged by plaintiff, they were similarly overvalued in connection with redemption of Fund shares.

40. If the defendants are liable to plaintiff and members of the Purchasing Class in connection with the purchase of Fund shares by reason of overvaluation of restricted securities in the portfolio of the Fund, then plaintiff and members of the Purchasing Class who have redeemed Fund shares since March 15, 1968 have received excessive amounts by reason of such alleged overvaluation of restricted securities and are liable to the defendants to the extent thereof.

41. By reason of the foregoing, plaintiff and members of the Purchasing Class are or may be liable to defendants, wholly or in part, for the claims alleged in the complaint herein.

EIGHTH AFFIRMATIVE DEFENSE

42. Defendants repeat and reallege each of the allegations contained in paragraphs 35 through 40, inclusive, of their answer with the same force and effect as if set forth at length herein.

43. After deduction of the sales charge, the price for Fund shares purchased by plaintiff and members of the Purchasing Class was paid to and received and retained by the Fund.

44. If the defendants are liable to plaintiff and members of the Purchasing Class or to the Fund by reason of overvaluation of restricted securities in the portfolio of the Fund in connection with the sale or redemption, or both, of Fund shares, then the Fund is liable to the defendants to the extent that the Fund has received funds from plaintiff and members of the Purchasing Class by reason of such overvaluation.

45. By reason of the foregoing, the Fund is or may be liable to the defendants, wholly or in part, for the claims alleged in the complaint herein.

WHEREFORE, the defendants Oppenheimer Management Corporation, Oppenheimer & Co., Leon Levy and Jack Nash demand judgment as follows:

1. Dismissing the complaint herein, together with the costs and disbursements of this action;

2. If said defendants are liable to plaintiff or others (including but not limited to all persons similarly situated

on whose behalf plaintiff acts as representative and defendant Oppenheimer Fund, Inc.) by reason of overvaluation of restricted securities in the portfolio of said Fund, holding the plaintiff and all such others jointly and severally liable to said defendants for all amounts received by them or to which they are entitled to the extent that such amounts were based upon overvaluation of restricted securities in the portfolio of said Fund and setting off such amounts against any amounts for which said defendants may be liable to the plaintiff and all such others; and

3. Such other, further and different relief as may be just.

GUGGENHEIMER & UNTERMYER

By /s/ LEON H. TYKULSKER
A Member of the Firm
Attorneys for Defendants
Oppenheimer Management Corporation,
Oppenheimer & Co., Leon Levy and
Jack Nash
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Amended Answer of Defendant
Oppenheimer Fund, Inc.

No. 69 Civ. 1242*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IRVING SANDERS,

Plaintiff,

—against—

LEON LEVY, JACK NASH, EDMUND T. DELANEY, EMANUEL CELLER, ERIC HAUSER, JOSEPH M. MCDANIEL, JR., SIDNEY M. ROBBINS, OPPENHEIMER MANAGEMENT CORPORATION, OPPENHEIMER & COMPANY, and OPPENHEIMER FUND, INC.,

Defendants.

Now comes Oppenheimer Fund, Inc. (Fund) by its attorneys, Weisman, Celler, Spett, Modlin & Wertheimer, and paragraph by paragraph answers the complaint herein:

1. Admits the allegations of paragraph 1.

2. Denies each and every allegation in paragraph 2, except that it admits that the action puports to be brought representatively on behalf of those of the shareholders of the Fund who purchased shares of the Fund subsequent to March 15, 1968.

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* The amended answers of this defendant to the complaints filed in 69 Civ. 2029 and 69 Civ. 2642 have not been included in the appendix herein. Relevant to these proceedings, the amended answer of this defendant to each of the respective complaints does not differ in any substantial way.

3. Denies each and every allegation in paragraph 3 of the complaint, except that it admits that the jurisdiction of the Court purports to be based on Section 27 of the Securities Exchange Act, 15 U.S.C. § 78(aa), Section 44 of the Investment Company Act, 15 U.S.C. § 80a-43, Sections 1331 and 1337 of the Judicial Code, 28 U.S.C. §§ 1331 and 1337, and the doctrine of pendent jurisdiction.

4. Admits the allegations of paragraph 4 of the complaint, except that it denies that the public offering price of shares is other than the net asset value of the shares plus a stated sales charge.

5. Admits the allegation of paragraph 5 of the complaint.

6. Admits the allegations of paragraph 6 of the complaint.

7. Admits the allegations of paragraph 7 of the complaint.

8. Admits the allegations contained in paragraph 8 of the complaint, except that the shareholdings therein referred to were true only as of December 31, 1967.

9. Admits the allegation of paragraph 9 of the complaint.

10. Admits the allegations of paragraph 10 of the complaint, except that it avers that the defendant Jack Nash is an assistant secretary of Oppenheimer Management Corporation (Management Corporation), not the secretary.

11. Admits the allegations of paragraph 11 of the complaint.

12. Denies each and every allegation contained in paragraph 12 of the complaint, except that it admits that the Fund filed a prospectus with the Securities and Exchange Commission for the sale of shares of the Fund which became effective on March 14, 1968, that thereafter said prospectus was revised effective September 3, 1968, and that shares of the Fund have been sold since March 15, 1968 by use of the mails and other instrumentalities in interstate commerce.

13. Denies each and every allegation of paragraph 13 of the complaint, and avers on the contrary that the prospectus of the Fund, as supplemented on September 3, 1968, stated that the Fund would not make any investment which would cause more than 15% of the value of its assets to be invested in securities which are subject to legal or contractual restrictions on resale or are otherwise not readily saleable; but admits that the text in subdivisions A and B were not set forth "in haec verba" in the prospectus.

14. Denies each and every allegation contained in paragraph 14 of the complaint, except that it admits that subsequent to March 15, 1968 the Fund purchased the restricted securities therein referred to.

15. Denies each and every allegation contained in paragraph 15 of the complaint.

16. Denies each and every allegation contained in paragraph 16 of the complaint.

17. Denies each and every allegation contained in paragraph 17 of the complaint.

18. Denies each and every allegation contained in paragraph 18 of the complaint.

19. Denies each and every allegation contained in paragraph 19 of the complaint.

20. Denies each and every allegation contained in paragraph 20 of the complaint.

21. Denies each and every allegation contained in paragraph 21 of the complaint.

22. Denies each and every allegation contained in paragraph 22 of the complaint.

23. Denies each and every allegation contained in paragraph 23 of the complaint.

24. Denies the allegation of paragraph 24 of the complaint, except that it admits that the action purports to be brought derivatively on behalf of the Fund.

25. Admits the allegations of paragraph 25 of the complaint.

26. Without making any admission as to the jurisdiction of this Court, the Fund admits that this action is not brought collusively.

27. Denies each and every allegation of paragraph 27 of the complaint.

28. Denies each and every allegation of paragraph 28 of the complaint.

29. Denies each and every allegation of paragraph 29 of the complaint.

30. Denies each and every allegation of paragraph 30 of the complaint.

31. Denies each and every allegation of paragraph 31 of the complaint.

32. Denies each and every allegation of paragraph 32 of the complaint.

33. Denies each and every allegation contained in paragraph 33 of the complaint, except that it admits that the Board of Directors of the Fund would not bring this action.

FIRST AFFIRMATIVE DEFENSE

34. The Fund is an open-end diversified investment company of the management type, organized under the laws of the State of New York. The Fund's shares are registered under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq. The Fund is registered under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., and it conducts its business in compliance with said Acts and with the rules and regulations issued by the Securities and Exchange Commission thereunder.

35. The shares of the Fund are offered for sale to the public pursuant to registration statements which have duly become effective under the Securities Act of 1933, which registration statements include detailed prospectuses which are issued at least annually by the Fund. Each year the Fund delivers to its shareholders a proxy statement in connection with the annual meeting of shareholders at

which the shareholders vote for, among other things, the election of directors and approval of, among other things, the Investment Advisory Agreement between the Fund and Management Corporation.

36. All prospectuses and proxy statements of the Fund are submitted for examination and review to the Securities and Exchange Commission prior to release and distribution to prospective purchasers and holders of shares of the Fund.

37. Said prospectuses and proxy statements have at all times disclosed fully and fairly the terms of agreements between the Fund and Management Corporation, including the compensation paid by the Fund to Management Corporation for advisory and management services and the compensation paid to Oppenheimer & Co. for services, including underwriting and brokerage services. Such prospectuses and proxy statements disclose fully and fairly all material relationships among the Fund, its officers and directors, Management Corporation and Oppenheimer & Co.

38. The prospectus of the Fund, as supplemented on September 3, 1968, set forth the extent of the Fund's investments in investment letter securities and stated that the Fund would not make any investment which would cause more than 15% of the value of its assets to be invested in securities which are subject to legal or contractual restrictions on resale or are otherwise not readily saleable.

39. The Fund regularly publishes and distributes to its shareholders annual, semi-annual and quarterly reports,

which clearly and accurately set forth all payments made by the Fund to Management Corporation and to Oppenheimer & Co.

40. Upon information and belief, at or prior to the time plaintiff became a shareholder of the Fund he received a copy of the then current prospectus of the Fund, and since he became a shareholder he has received copies of all annual, semi-annual and quarterly reports of the Fund.

41. The Fund's semi-annual report to its shareholders for the period ending June 30, 1968, the quarterly report for September 30, 1968, the report for year ended December 31, 1968 and subsequent reports all set forth that the Fund had acquired securities under investment letters with restrictions on transfer or resale and that the valuation thereof had been determined by the Board of Directors of the Fund.

42. At no time during the period referred to in the complaint did the value of investment letter securities of the Fund exceed 10% of the value of all of the securities of the Fund.

43. To the extent that the value of the Fund's investments in investment letter securities may be deemed material, there was fair, adequate and timely disclosure thereof to the shareholders of the Fund.

Second Affirmative Defense

44. The Fund repeats and realleges each of the allegations contained in paragraphs 34 through 43, inclusive, of this answer as fully as if set out at length herein.

45. Section 2(a) (39) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a) (39), provides in relevant part that with respect to assets of registered investment companies the value of securities for which market quotations are readily available shall be the market value of such securities and the value of other securities and assets shall be the fair value as determined in good faith by the Board of Directors of the Investment Company. Rule 2a-4 of the General Rules and Regulations issued by the Securities and Exchange Commission under the Investment Company Act of 1940 provides in relevant part that in computing the price of Fund shares for the purpose of distribution, redemption and repurchase of portfolio securities for which market quotations are readily available shall be valued at current market value and other securities shall be valued at fair value as determined in good faith by the Board of Directors of the Fund.

46. At all times while the transferability of the securities referred to in the complaint herein was restricted, the value of each such security for the purposes referred to in the complaint was determined in good faith by the Board of Directors of the Fund, and such value was in each case the fair value thereof, in accordance with the requirements of the aforesaid statute and Rule.

THIRD AFFIRMATIVE DEFENSE

47. The Fund repeats and realleges each of the allegations contained in paragraphs 34 through 43, inclusive, of this answer as fully as if set out at length herein.

48. Upon information and belief, the plaintiff does not fairly and adequately represent the interests of the shareholders of the Fund for, among other things, the following reasons:

(a) The great majority of shareholders approved the purchases of the restricted securities referred to in the complaint and the valuation thereof by the Board of Directors of the Fund;

(b) The plaintiff's claims herein involve a conflict of interest in that he seeks to recover for himself and others damages for alleged overpayments which he and others made to the Fund while at the same time he seeks to sue derivatively on behalf of the Fund to recover alleged overpayments made by the Fund to others.

49. Upon information and belief, the plaintiff may not maintain this action derivatively on behalf of the Fund or representatively under Rule 23 of the Federal Rules of Civil Procedure on behalf of the shareholders of the Fund.

FOURTH AFFIRMATIVE DEFENSE

50. The Fund repeats and realleges each of the allegations contained in paragraphs 34 through 43, inclusive, of this answer as fully as if set out at length herein.

51. Upon information and belief, at no time prior to the institution of this action did the plaintiff express to the defendants disapproval of the matters of which he now complains in the complaint herein.

52. Upon information and belief, the plaintiff and the shareholders of the Fund have acquiesced in and approved the matters and transactions alleged in the complaint, re-

ceived the benefits of the securities acquired by the Fund, and they have, therefore, waived the claims, if any, with respect thereto and are barred from complaining of said matters and transactions.

FIFTH AFFIRMATIVE DEFENSE

53. The Fund repeats and realleges each of the allegations contained in paragraphs 34 through 43, inclusive, of this answer as fully as if set out at length herein.

54. Shareholders of the Fund, including plaintiff, who purchased Fund shares subsequent to receipt of the Fund's semi-annual report for the period ending June 30, 1968 or of the Fund's prospectus as supplemented on September 3, 1968 had due notice that the Fund had acquired and might continue to acquire investment letter securities, and they are therefore estopped to assert any claims with respect to such securities acquired after such dates.

SIXTH AFFIRMATIVE DEFENSE

55. Upon information and belief, since March 15, 1968 plaintiff and/or members of the Purchasing Class have caused the Fund from time to time to redeem some or all of their Fund shares.

56. At all relevant times, the method of valuing Fund shares for purposes of redemption was the same as the method of valuing Fund shares for purposes of sale, and if restricted securities were overvalued in connection with sale of Fund shares as alleged by plaintiff, they were similarly overvalued in connection with redemption of Fund shares.

57. If the defendant Fund is liable to plaintiff and members of the Purchasing Class in connection with the purchase of Fund shares by reason of overvaluation of restricted securities in the portfolio of the Fund, then plaintiff and members of the Purchasing Class who have redeemed Fund shares since March 15, 1968 have received excessive amounts by reason of such alleged overvaluation of restricted securities and are liable to the defendant Fund to the extent thereof.

58. By reason of the foregoing, plaintiff and members of the Purchasing Class are or may be liable to the defendant Fund, wholly or in part, to the extent of the claims alleged in the complaint herein.

WHEREFORE, as to the plaintiff's asserted class action in Count One, the Fund demands judgment dismissing the complaint herein, together with the costs and disbursements of this action; and with respect to such action, if the Fund is liable to plaintiff or others (including but not limited to all persons similarly situated on whose behalf plaintiff acts as representative) by reason of overvaluation of restricted securities in the portfolio of the Fund, holding the plaintiff and all such others jointly and severally liable to defendant Fund for all amounts received by them or to which they are entitled to the extent that such amounts were based upon overvaluation of restricted securities in the portfolio of said Fund and setting off such amounts against any amounts for which defendant Fund may be liable to the plaintiff and all such others; and as to plaintiff's asserted derivative action in Count Two, the Fund, although of the view that this action is wholly without merit, leaves the disposition thereof to the Court; and as

Amended Answer of Defendant Oppenheimer Fund, Inc.

to both asserted causes of action the Fund requests such other, further and different relief as may be just.

WEISMAN, CELLER, SPETT,
MODLIN & WERTHEIMER

By /s/ O. JOHN ROGGE
A Member of the Firm
Attorneys for Defendant
Oppenheimer Fund, Inc.
425 Park Avenue
New York, New York 10022
Telephone No.: (212) 371-5400

Amended Answer of Defendant Edmund T. Delaney

No. 69 Civ. 1242* **

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IRVING SANDERS,

Plaintiff,

—against—

LEON LEVY, JACK NASH, EDMUND T. DELANEY, EMANUEL CELLER, ERIC HAUSER, JOSEPH M. MCDANIEL, JR., SIDNEY M. ROBBINS, OPPENHEIMER MANAGEMENT CORPORATION, OPPENHEIMER & COMPANY, and OPPENHEIMER FUND, INC.,

Defendants.

AMENDED ANSWER OF DEFENDANT
EDMUND T. DELANEY

1. Defendant denies, upon information and belief (except as to paragraphs "14" to "20" inclusive, which are denied on knowledge as to his own acts), the allegations of each numbered paragraph of the first cause of action of

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* The amended answers of this defendant to the complaints filed in 69 Civ. 2029 and 69 Civ. 2642 have not been included in the appendix herein. Relevant to these proceedings, the amended answer of this defendant to each of the respective complaints does not differ in any substantial way.

** Emanuel Celler, a defendant in this consolidated action, has not filed an answer in 69 Civ. 1242 on the grounds that he was not validly served in that action. Mr. Celler's amended answer in 69 Civ. 2029 and 69 Civ. 2642 are substantially identical to the amended answer of Mr. Delany in 69 Civ. 1242.

the complaint except to the extent specifically admitted or otherwise denied.

Paragraph	*Response*
1	Admits information that plaintiff is a shareholder as alleged except with respect to 4.196 shares purchased on June 21, 1968.
3	Admit only that this court has subject matter jurisdiction of claims properly predicated on the provisions of the cited statutes and the doctrine of pendent jurisdiction.
4-7	Admitted.
8	Admitted except that the shareholdings referred to therein are admitted only as of December 31, 1967.
9	Admitted.
10	Admitted except that Jack Nash is an Assistant Secretary and not the Secretary of Oppenheimer Management Corporation.
11	Admitted.
12	Admit only that the Fund filed a prospectus for the sale of its shares with the Securities and Exchange Commission which became effective on March 14, 1968 which was revised effective September 3, 1968 and that, since March 15, 1968, shares of the Fund have been sold by use of the mails and other instrumentalities of interstate commerce.
14	Admit, on information and belief, only that the Fund purchased the securities referred to therein subsequent to March 15, 1968.

2. Defendant reiterates and repeats each denial and admission to plaintiff's first cause of action and denies, upon information and belief (except as to paragraphs "27", "28", "30", "31" and "33" which are denied on knowledge as to his own acts), the allegations of each numbered paragraph of the second cause of action of the complaint except to the extent specifically admitted or otherwise denied as follows:

Paragraph	*Response*
24	Admits only that plaintiff purports to bring this suit derivatively as to the Fund.
25	Admits information that plaintiff is a shareholder as alleged except with respect to 4.196 shares purchased on June 21, 1968.
26	Admitted.

FIRST DEFENSE

3. The complaint fails to state any claim within the subject matter jurisdiction of this Court on which any relief can or should be granted.

SECOND DEFENSE

4. The claims alleged in the complaint or some of them are barred, in whole or in part, by laches or the applicable statutes of limitations.

THIRD DEFENSE

5. Plaintiff has failed, without justification or legal excuse, to make demand, before bringing this suit, upon either the directors or shareholders of Fund of the claim or claims alleged in the complaint to be asserted by or on behalf of the Fund.

FOURTH DEFENSE

6. At all material times, the Fund was an open-end, diversified, investment company of the management type, incorporated under the laws of the State of New York and registered with the Securities and Exchange Commission (the "Commission") under the Investment Company Act of 1940. The Fund's shares are registered under the Securities Act of 1933. The Fund conducts its business in compliance with said acts and with the rules and regulations issued thereunder by the Commission.

7. Shares of the Fund are offered for sale to the public only pursuant to prospectuses issued at least annually by the Fund. Each shareholder of Fund receives regularly an annual and semi-annual report of Fund as well as, at least annually, a proxy statement in connection with each annual meeting of its shareholders. In addition, it is the practice of the Fund to send to each shareholder a copy of its latest prospectus as the same becomes effective.

8. All such proxy statements and prospectuses have, prior to their release and delivery, been submitted for review and scrutiny by the Staff of the Commission.

9. At all material times, said prospectuses, reports and proxy statements have fully and fairly disclosed:

(a) All of the material relationships of and among the Fund, its officers and directors, Oppenheimer Management Corporation and Oppenheimer & Co.

(b) all payments made by the Fund to Oppenheimer Management Corporation and to Oppenheimer & Co.

(c) All material terms of the investment advisory agreements, sub-investment advisory agreements and

underwriting agreements from time to time proposed or in force between and among the Fund, Oppenheimer Management Corporation and Oppenheimer & Co.

10. The Fund's semi-annual report to its shareholders for the period ending June 30, 1968, the quarterly report of the Fund as of September 30, 1968 and the annual report of the Fund for the year ended December 31, 1968, as well as the subsequent reports of the Fund all set forth that the Fund had acquired securities under letters of investment with restrictions on transfer or resale and that the valuation thereof had been determined by the directors of the Fund.

11. To the extent that the value of the Fund's investments in such securities may be deemed material, there was fair, adequate and timely disclosure thereof both to the shareholders of the Fund and to all purchasers of the Fund's shares.

FIFTH DEFENSE

12. The prospectus of the Fund, as supplemented on September 3, 1968, set forth the extent of the Fund's investments in securities pursuant to investment letters and stated that the Fund would not make any investment which would cause more than 15% of the value of its assets to be invested in such securities.

13. Plaintiff and all members of the class he purports to represent who purchased shares of the Fund subsequent to receipt of the Fund's semi-annual report for the period ending June 30, 1968 or of the Fund's prospectus as supplemented on September 3, 1968, had adequate and proper notice that the Fund had acquired and might continue to

acquire portfolio securities pursuant to investment letters and they are therefore estopped to assert any claim with respect to purchases of the Fund's shares subsequent to such notice.

SIXTH DEFENSE

14. Section 2(a)(3) of the Investment Company Act of 1940 provides, in relevant part, that the value of portfolio securities held by registered investment companies for which market quotations are readily available, shall be the market value of such securities and that the value of other portfolio securities and assets shall be the fair value thereof as determined in good faith by the Board of Directors of such registered investment company.

15. At all material times, the value of each portfolio security acquired by the Fund pursuant to a letter of investment as alleged in the complaint herein was fixed and determined in good faith by the directors of Fund and all computations of the net asset value of the securities and assets of the Fund for all purposes, including those alleged in the complaint herein, were based on the values so fixed and determined.

SEVENTH DEFENSE

16. In the latter part of December 1967, the recommendation of Oppenheimer Management Corporation that the Fund invest a limited portion of its assets in securities which had not been registered for public distribution under the Securities Act of 1933 (provided such securities could be purchased under an agreement which would provide for their subsequent registration), was reviewed and approved by the Fund's Board of Directors, a majority of whom were

neither officers, directors nor otherwise affiliated with Oppenheimer Management Corporation or Oppenheimer & Company.

17. Such decision and the other matters alleged in the complaint relate solely to the internal management of the Fund, to wit, the character, quality and suitability of securities to be acquired and held in its portfolio.

18. Upon information and belief, all investments by the Fund in unregistered securities have been within the limitations of such approval.

19. The aforesaid approval by the Board of Directors was a reasonable exercise of business judgment and such approval is binding upon the Fund and upon all of its shareholders, including plaintiff.

EIGHTH DEFENSE

20. At the annual meeting of shareholders of the Fund held in the latter part of April 1969 after the dissemination and distribution of the aforesaid reports, prospectuses and proxy statements with the disclosures hereinabove described and after the distribution of a proxy statement for such meeting fully and fairly disclosing the institution of this action and the nature of the charges and contentions made therein, the directors of the Fund who had approved the policy of limited investments in unregistered securities and participated in the valuation of such securities were re-elected by an overwhelming plurality of the shareholders voting at such meeting in person or by proxy.

21. The shareholders of the Fund, including plaintiff, have approved and acquiesced in the matters and transactions which are the subject matter of the complaint and are barred and estopped from complaining of such matters and transactions.

NINTH DEFENSE

22. On information and belief, plaintiff does not fairly and adequately represent the interests either of the members of the class he purports to represent, the Fund, or its shareholders for, among other things, the following reasons:

(a) Plaintiff's claims herein involve a conflict of interest in that he seeks to recover primarily against the Fund, for himself and others, damages for alleged overpayments on the purchase of Fund's shares while, at the same time, he seeks to sue derivatively on behalf of the Fund to recover alleged overpayments made by the Fund to its investment adviser and redeeming shareholders; and

(b) A great majority of shareholders of the Fund approve the purchases and the policy of purchasing the unregistered securities referred to in the complaint and the valuation thereof by the directors of the Fund.

TENTH DEFENSE

23. Upon information and belief, since March 15, 1968 plaintiff and/or members of the Purchasing Class have caused the Fund from time to time to redeem some or all of their Fund shares.

24. At all relevant times, the method of valuing Fund shares for purposes of redemption was the same as the

method of valuing Fund shares for purposes of sale, and if restricted securities were overvalued in connection with sale of Fund shares as alleged by plaintiff, they were similarly overvalued in connection with redemption of Fund shares.

25. If defendant is liable to plaintiff and members of the Purchasing Class in connection with the purchase of Fund shares by reason of overvaluation of restricted securities in the portfolio of the Fund, then plaintiff and members of the Purchasing Class who have redeemed Fund shares since March 15, 1968 have received excessive amounts by reason of such alleged overvaluation of restricted securities and are liable to the defendant to the extent thereof.

26. By reason of the foregoing, plaintiff and members of the Purchasing Class are or may be liable to defendant, wholly or in part, to the extent of the claims alleged in the complaint herein.

ELEVENTH DEFENSE

27. After deduction of the sales charge, the price for Fund shares purchased by plaintiff and members of the Purchasing Class was paid to and received and retained by the Fund.

28. If defendant is liable to plaintiff and members of the Purchasing Class or to the Fund by reason of overvaluation of restricted securities in the portfolio of the Fund in connection with the sale or redemption, or both, of Fund shares, then the Fund is liable to defendant to the extent that the Fund has received excess amounts from plaintiff and members of the Purchasing Class by reason of such overvaluation.

Amended Answer of Defendant Edmond T. Delaney

29. By reason of the foregoing, the Fund is or may be liable to defendant, wholly or in part, to the extent of the claims alleged in the complaint here.

WHEREFORE, defendant demands judgment as follows:

1. Dismissing the complaint herein, together with the costs and disbursements of this action;

2. If defendant is liable to plaintiff or others (including but not limited to all persons similarly situated on whose behalf plaintiff acts as representative and defendant Oppenheimer Fund, Inc.) by reason of overvaluation of restricted securities in the portfolio of said Fund, holding the plaintiff and all such other jointly and severally liable to defendant for all amounts received by them or to which they are entitled to the extent that such amounts were based upon overvaluation of restricted securities in the portfolio of said Fund and setting off such amounts against any amounts for which defendant may be liable to the plaintiff and all such others; and

3. Granting defendant such other, further and different relief as may be just.

Dated: New York, N.Y.
June 22, 1973

TOWNSEND & LEWIS
By /s/ JOHN F. DAVIDSON
A Member of the Firm
Attorneys for Defendant
Edmund T. Delaney
Office and P.O. Address
120 Broadway
New York, N.Y. 10005
Telephone: (212) 267-6180

Answers of Defendants
Oppenheimer Management Corp., et al.,
to Plaintiffs' Supplementary Interrogatories

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

69 Civil 1242

IRVING SANDERS,

Plaintiff,

—against—

LEON LEVY, et al.,

Defendants.

EGON TAUSSIG,

Plaintiff,

—against—

SIDNEY M. ROBBINS, et al.,

Defendants.

MICHAEL SHAEV and RITA SHAEV,

Plaintiffs,

—against—

ERIC HAUSER, et al.,

Defendants.

Defendants, Oppenheimer Management Corporation, Oppenheimer & Co., Leon Levy and Jack Nash, answer plaintiff's supplementary interrogatories dated February 27, 1973, upon information and belief as follows:

Answer of Defendants Oppenheimer Management Corp., et al., to Plaintiffs' Supplementary Interrogatories

1. Interrogatory 1. The number of shares of Oppenheimer Fund ("Fund") sold, and the number of shares the Fund redeemed on each business day between March 15, 1968 and December 31, 1970 are set forth in column 2 entitled daily subscriptions and in column 3 entitled daily redemptions of the annexed schedule which is marked Exhibit 1 and is made a part hereof.

2. Interrogatory 2. The total number of shares of the Fund outstanding and the value of the net assets of the Fund as of the close of the New York Stock Exchange on each business day between March 15, 1968 and December 31, 1970, are set forth in columns 4 and 5 of Exhibit 1.

• • • • •

Dated: New York, New York
March 29, 1973

OPPENHEIMER MANAGEMENT CORPORATION

By /s/ ROBERT G. GALLI
Robert G. Galli, Administrative
Vice President and Secretary

Answer of Defendants Oppenheimer Management Corp., et al., to Plaintiffs' Supplementary Interrogatories

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

ROBERT G. GALLI, being duly sworn, deposes and says, that he is the Administrative Vice President and Secretary of Oppenheimer Management Corporation; that he has read the foregoing answers to plaintiff's interrogatories and knows the contents thereof; that the same are true to deponent's knowledge, except as to matters therein stated to be alleged upon information and belief and as to those deponent believes them to be true.

/s/ ROBERT G. GALLI
Robert G. Galli

[Sworn to March 29, 1973]

Defendants Oppenheimer & Co. Leon Levy and Jack Nash adopt the answers to plaintiff's supplementary interrogatories herein, and agree that they will be bound by the same.

March 29, 1973

OPPENHEIMER & Co.

By: /s/ JACK NASH

/s/ LEON LEVY
Leon Levy

/s/ JACK NASH
Jack Nash

Answer of Defendants Oppenheimer Management Corp., et al., to Plaintiffs' Supplementary Interrogatories

EXHIBIT 1

OPPENHEIMER FUND INC.

Date	Capital Stock Daily Subscriptions	Daily Redemptions	Outstanding Shares	Total Net Assets
March 1968				
	•	•	•	•
28	18,549	16,364	20,743,192	$148,783,980.67
	•	•	•	•
November 1969				
	•	•	•	•
7	58,170	14,000	39,776,879	333,594,812.00
	•	•	•	•
April 1970				
	•	•	•	•
24	65,533	17,696	45,072,096	294,215,334.87
	•	•	•	•

Interrogatories dated February 7, 1973 of Defendants Oppenheimer Management Corp., et al., Directed to Plaintiffs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

PLEASE TAKE NOTICE that the plaintiffs are required to serve and file pursuant to Rule 33 of the Federal Rules of Civil Procedure their separate answers under oath to the following interrogatories:

1. With respect to the plaintiff Irving Sanders:

(a) What is his residence address?

(b) What is his business address?

(c) What is his occupation?

2. With respect to the plaintiff Egon Taussig:

(a) What is his residence address?

(b) What is his business address?

(c) What is his occupation?

3. With respect to plaintiffs Michael Shaev and Rita Shaev:

(a) What are their residence addresses?

(b) What are their business addresses?

(c) What are their occupations?

Interrogatories dated February 7, 1973 of Defendants Oppenheimer Management Corp., et al., Directed to Plaintiffs

4. With respect to shares of stock of the defendant Oppenheimer Fund, Inc. (hereinafter referred to as the "Fund") purchased by the plaintiffs Irving Sanders, Egon Taussig, Michael Shaev and Rita Shaev, stated separately as to each plaintiff:

(a) What was the exact number of shares of the Fund in which the plaintiffs had a beneficial interest in whole or in part, at the time of commencement of this action, and in what name or names were said shares registered?

(b) When did the plaintiffs first acquire a beneficial interest in shares of the Fund, stating the number of such shares, the price paid for such shares, the name or names in which said shares were registered and the name and address of the dealer or other sellers from whom such shares were purchased?

(c) Were any shares of the Fund subsequently acquired? If so, state the date of each such acquisition, the number of shares in each such acquisition, the name or names in which said shares were registered, specifying in each case the basis of the acquisition (i.e., whether by purchase, dividend, capital gain distribution, gift, etc.), and as to each purchase, the price paid thereof and the name and address of the dealer or other seller from whom such shares were purchased.

(d) Do the plaintiffs have any beneficial interest in any shares of the Fund held in any name other than theirs? If so, state the nature of plaintiffs' interest,

Interrogatories dated February 7, 1973 of Defendants Oppenheimer Management Corp., et al., Directed to Plaintiffs

the number of shares, and the name or names in which such shares are registered.

5. Have the plaintiffs, Irving Sanders, Egon Taussig, Michael Shaev and Rita Shaev (hereinafter referred to as "plaintiffs") at any time since they acquired an interest in shares of the Fund sold or required the Fund to redeem any of their shares of the Fund? If so, as to each plaintiff state the date when each such sale or redemption was effected, the number of shares sold or redeemed, and the price realized on each such sale or redemption.

• • • • •

Dated: New York, N.Y.
February 7, 1973

GUGGENHEIMER & UNTERMYER
Attorneys for Defendants Oppenheimer Management Corporation, Oppenheimer & Co., Leon Levy and Jack Nash
80 Pine Street
New York, N.Y.
Telephone 344-2040

Plaintiff Sanders' Answers to Defendants' Interrogatories Verified March 27, 1973

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiff Sanders answers the defendants' interrogatories dated February 7, 1973, upon information and belief except as to interrogatories 1 through 10 which are answered upon knowledge as follows:

1(a) 5009 Broadway, New York, New York.

(b) None.

(c) Retired.

2. Not applicable.

3. Not applicable.

4(a) 209.823 shares; Irving Sanders.

(b) I purchased 2.71 shares in my name at $22.70 per share on December 23, 1966, through Bassuk Mutual Service Corp.

(c) I subsequently purchased of Oppenheimer Fund ("the Fund") in my name through Bassuk Mutual Service Corp. and its successors-in-interest as follows:

Plaintiff Sanders' Answers to Defendants' Interrogatories Verified March 27, 1973

Date of Acquisition	*No. of Shares Acquired*	*Price Per Share*	*Basis of Acquisition*
1/23/67	11.305	$24.26	Purchase
1/31/67	.627	23.65	Cap Gain
2/24/67	1.991	23.73	Purchase
3/31/67	1.918	24.63	Purchase
4/28/67	1.822	25.94	Purchase
5/29/67	1.849	25.55	Purchase
6/28/67	1.800	26.25	Purchase
6/30/67	.274	25.73	Cap Gain
6/30/67	.018	25.73	Inc Divd
8/3/67	1.675	27.76	Purchase
8/29/67	1.809	26.54	Purchase
9/28/67	1.731	27.29	Purchase
10/31/67	1.733	27.27	Purchase
11/29/67	1.726	27.37	Purchase
1/2/68	1.636	28.42	Purchase
1/22/68	1.723	27.86	Purchase
1/31/68	5.619	22.94	Cap Gain
1/31/68	82.678		Stock Div
2/28/68	6.553	7.21	Purchase
3/29/68	6.526	7.24	Purchase
5/1/68	5.657	8.22	Purchase
5/28/68	5.607	8.56	Purchase
6/21/68	4.196	8.84	Cap Gain
6/28/68	5.456	8.66	Purchase
7/30/68	5.720	8.26	Purchase
8/29/68	5.585	8.46	Purchase
9/27/68	5.069	9.34	Purchase
10/31/68	5.053	9.35	Purchase
12/5/68	4.609	10.09	Purchase

Plaintiff Sanders' Answers to Defendants' Interrogatories
Verified March 27, 1973

Acquisition Date of	*No. of Shares Acquired*	*Price Per Share*	*Basis of Acquisition*
1/3/69	4.817	9.81	Purchase
1/29/69	4.984	9.63	Purchase
1/31/69	10.523	9.21	Cap Gain
3/3/69	5.678	8.19	Purchase
4/7/69	5.686	8.31	Purchase
4/30/69	5.275	9.10	Purchase
5/29/69	5.369	8.80	Purchase
6/20/69	1.164	7.77	Inc Divd
6/20/69	4.075	7.77	Cap Gain
7/1/69	5.871	7.92	Purchase
6/19/70	3.293	6.10	Inc Divd
2/29/72	.684	9.36	Inc Divd
2/29/72	.448	9.36	Cap Gain
2/5/73	.454	8.16	Ind Divd
2/5/73	2.932	8.16	Cap Gain

(d) No.

5. I redeemed 200 shares of the Fund on April 30, 1971, at $8.87 per share.

• • • • •

/s/ Irving Sanders
Irving Sanders

Dated: New York, N.Y.
March 27, 1973

Plaintiff Sanders' Answers to Defendants' Interrogatories
Verified March 27, 1973

State of New York,
County of New York, *ss.:*

Irving Sanders, being duly sworn, deposes and says that he is one of the plaintiffs in the above action; that he has read the foregoing answers to defendants' interrogatories and knows the contents thereof; that the same are true to deponent's knowledge except as to matters therein stated upon information and belief and as to those, deponent believes them to be true.

/s/ Irving Sanders
Irving Sanders

[Sworn to March 27, 1973]

Plaintiff Shaevs' Answers to Defendants' Interrogatories Verified March 30, 1973

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiffs Shaev answer the defendants interrogatories dated February 7, 1973, upon information and belief except as to interrogatories 1 through 10 which are alleged upon knowledge as follows:

1. Not applicable.

2. Not applicable.

3(a) 19 Twin Rivers Drive, North East Windsor, New Jersey.

(b) Michael Shaev—247 Huyler Street, South Hackensack, New Jersey.

(c) Michael Shaev—printer; Rita Shaev—housewife.

4(a) 45.071 shares—Michael Shaev and Rita Shaev as joint tenants.

(b) We purchased 22.599 shares in our joint names at $8.85 per share on April 24, 1968 through Kurz-Liebow & Co., Inc.

(c) We subsequently purchased shares of Oppenheimer Fund ("the Fund") in our joint names through Kurz-Liebow & Co., Inc. as follows:

Plaintiffs Shaevs' Answers to Defendants' Interrogatories Verified March 30, 1973

Date of Acquisition	*No. of Shares Acquired*	*Price Per Share*	*Basis of Acquisition*
6/21/68	.639	$ 8.84	Cap. gain $0.25
10/ 1/68	19.512	10.25	Purchase
1/31/69	2.321	9.21	Cap. gain $0.50
6/20/69	.812	7.77	Cap. gain $0.14
6/20/69	.232	7.77	Inc. Divd $0.04
6/19/70	.643	6.10	Inc. Divd $0.08
2/26/71	1.179	7.93	Inc. Divd $0.20

(d) No.

5. We redeemed 40 shares of the Fund on September 29, 1971 at $8.61 per share.

• • • • •

Dated: New York, New York
March 30, 1973

/s/ MICHAEL SHAEV
Michael Shaev

Plaintiffs Shaevs' Answers to Defendants' Interrogatories Verified March 30, 1973

State of New York,
County of New York, ss.:

Michael Shaev, being duly sworn, deposes and says that he is one of the plaintiffs in the above action; that he has read the foregoing answers to defendants' interrogatories and knows the contents thereof; that the same are true to deponent's knowledge except as to matters therein stated upon information and belief and as to those, deponent believes them to be true.

/s/ MICHAEL SHAEV
Michael Shaev

[Sworn to March 30, 1973]

Plaintiff Taussig's Answers to Defendants' Interrogatories Verified April 9, 1973

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiff Taussig answers the defendants interrogatories dated February 7, 1973, upon information and belief except as to interrogatories 1 through 10 which are alleged upon knowledge as follows:

1. Not applicable.

2.(a) 3905 Point East Drive, North Miami Beach, Florida.

(b) Retired.

(c) Retired.

3. Not applicable.

4.(a) 2369.365 shares—Egon Taussig.

(b) I purchased 2302.026 shares in my name at $10.86 per share on December 24, 1968 through Equity Funding Securities Corp.

(c) I subsequently purchased shares of Oppenheimer Fund ("the Fund") in my name through Equity Funding Securities Corp. as follows:

Plaintiff Taussig's Answers to Defendants' Interrogatories Verified April 9, 1973

Date of Acquisition	*No. of Shares Acquired*	*Price Per Share*	*Basis of Acquisition*
1/31/69	124.974	$9.21	Cap. Gain
6/20/69	40.626	7.77	Cap. Gain
6/20/69	11.607	7.77	Inc. Divd
6/19/70	29.282	6.10	Inc. Divd
2/26/71	50.101	7.93	Inc. Divd
2/5/73	18.163	8.16	Inc. Divd
2/5/73	117.197	8.16	Cap. Gain

(d) No.

5. I redeemed shares of the Fund as follows:

Date	*No. of Shares Redeemed*	*Price Per Share*
2/11/69	13.736	$9.10
3/10/69	15.188	8.23
4/8/69	14.899	8.39
5/8/69	13.812	9.05
5/15/69	100.000	9.00
6/9/69	14.620	8.55
7/8/69	15.783	7.92
8/7/69	16.447	7.60
9/8/69	16.534	7.56
10/7/69	15.883	7.87
11/7/69	14.899	8.39
12/8/69	16.426	7.61
1/8/70	16.383	7.63
2/9/70	17.756	7.04
3/6/70	17.313	7.22
4/7/70	17.781	7.03

Plaintiff Taussig's Answers to Defendants' Interrogatories Verified April 9, 1973

Date	*No. of Shares Redeemed*	*Price Per Share*
5/8/70	19.968	6.26
6/8/70	20.392	6.13
7/15/70	21.368	5.85
8/6/70	19.778	6.32
9/9/70	18.519	6.75
10/8/70	17.680	7.07
11/9/70	17.986	6.95
12/7/70	16.938	7.38
1/7/71	16.404	7.62
2/5/71	15.509	8.06
3/8/71	15.300	8.17
4/7/71	14.706	8.50
5/10/71	14.318	8.73
6/9/71	14.302	8.74
7/12/71	14.124	8.85
8/9/71	15.356	8.14
9/9/71	13.998	8.93
10/11/71	14.108	8.86
11/9/71	14.881	8.40
12/9/71	14.451	8.65
1/11/72	13.661	9.15
2/9/72	13.284	9.41
3/9/72	12.887	9.70
4/11/72	12.513	9.99
5/9/72	13.528	9.24
6/9/72	13.499	9.26
7/11/72	13.587	9.20
8/9/72	13.383	9.34
9/11/72	13.873	9.01
10/10/72	14.205	8.80

Plaintiff Taussig's Answers to Defendants' Interrogatories Verified April 9, 1973

Date	*No. of Shares Redeemed*	*Price Per Share*
11/9/72	13.767	9.08
12/11/72	12.860	9.72
1/9/73	12.994	9.62
2/9/73	15.281	8.18

• • • • •

Dated: New York, New York
April 9, 1973

/s/ Egon Taussig
Egon Taussig

State of Florida,
County of Dade, ss.:

Egon Taussig, being duly sworn, deposes and says that he is one of the plaintiffs in the above action; that he has read the foregoing answers to defendants' interrogatories and knows the contents thereof; that the same are true to deponent's knowledge except as to matters therein stated upon information and belief and as to those, deponent believes them to be true.

/s/ Egon Taussig
Egon Taussig

[Sworn to April 9, 1973]

Plaintiffs' Notice of Motion for Class Action Treatment dated March 30, 1973

UNITED STATES DISTRICT COURT

Southern District of New York

[same title]

Please Take Notice, that upon the affidavit of Donald N. Ruby, sworn to March 30, 1973, and upon the pleadings and all prior proceedings herein, the undersigned will move this Court in Court Room 607-H of the United States Court House, Foley Square, New York, New York, on the 18th day of April, 1973, at 10:00 A.M. or as soon thereafter as counsel can be heard for an order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, declaring that this consolidated action be maintained as a class action, and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
March 30, 1973

Yours, etc.

Wolf Popper Ross Wolf & Jones

By Donald N. Ruby
A Member of the Firm
General Counsel for Plaintiffs
845 Third Avenue
New York, New York 10022
PL 9-4600

Plaintiffs' Notice of Motion for Class Action Treatment dated March 30, 1973

To:

GUGGENHEIMER & UNTERMYER
Attorneys for Oppenheimer Management Corporation, Oppenheimer & Company, Leon Levy and Jack Nash
80 Pine Street
New York, New York 10005

WEISMAN CELLER ALLAN SPETT SHEINBERG, Esqs.
Attorneys for Oppenheimer Fund, Inc.
1501 Broadway
New York, New York 10036

TOWNSEND & LEWIS
Attorneys for Edmund Delaney, et al.
120 Broadway
New York, New York 10005

Supporting Affidavit of Donald N. Ruby

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

Donald N. Ruby, being duly sworn, deposes and says:

1. I am a member of the firm of Wolf Popper Ross Wolf & Jones, general counsel for the plaintiffs in this consolidated action. This affidavit is submitted in support of the plaintiffs' motion for an order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, declaring that this consolidated action may be maintained as a class suit on behalf of persons who purchased shares of Oppenheimer Fund ("the Fund") during the period March 28, 1968 to April 24, 1970.

2. The *Sanders* action was commenced on March 26, 1969, and the Taussig and Shaev actions were commenced on May 12, 1969 and June 18, 1969, respectively. Said actions were brought by plaintiffs representatively on behalf of themselves and other persons similarly situated who purchased shares of the Fund since March, 1968, and derivatively on behalf of the Fund. Said actions are based upon violations of the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940 and Rules promulgated thereunder and are brought against Oppenheimer Management Corporation ("the

Manager") which is the investment adviser to the Fund and the general distributor of its shares, Oppenheimer & Company which owns all the voting stock of the Manager and the directors of the Fund.

3. The complaints in said actions allege, in substance, that the defendants other than the Fund caused the Fund to issue prospectuses which were false and misleading in that, among other things, they failed to state that the Fund would purchase restricted securities and the risks involved with respect to the purchase of restricted securities and they stated that the Fund's shares were being offered at net asset value which was not the case as a result of the improper valuation by the defendants of restricted securities in the portfolio of the Fund; that the defendants caused the Fund to issue periodic reports which were false and misleading in connection with the valuation of restricted securities in the portfolio of the Fund, and the net asset value of shares of the Fund; that the defendants other than the Fund caused the Fund to improperly value the restricted securities in the Fund's portfolio in violation of the Investment Company Act, the Securities Exchange Act and the Securities Act, and that the plaintiffs and other persons similarly situated who purchased shares of the Fund since March, 1968 were caused to pay false and inflated prices for their shares of the Fund as a result thereof. The plaintiffs seek to recover damages for themselves and other persons similarly situated for overpayments on purchases of shares of the Fund. The complaints further charge that as a result of the improper valuation of restricted securities in the Fund's portfolio, the Fund was caused to pay the Manager excessive fees under its management agreement and to redeem shares at inflated prices,

thereby wasting the Fund's assets. The plaintiffs also seek to recover on behalf of the Fund the damages sustained by the Fund and the profits made by the defendants as a result of the transactions complained of in said complaints.

4. On November 17, 1969, the defendants moved for an order pursuant to Rule 42(a) of the Federal Rules of Civil Procedure consolidating said actions on the ground that they involved common questions of law and fact, appointing a general counsel for the plaintiffs and enjoining any further actions for similar relief based upon claims which were the same or similar to those asserted in said three actions. On December 17, 1969, by Order of Judge Thomas F. Croake, said actions were consolidated for all purposes, the firm of Wolf Popper Ross Wolf & Jones, Esqs. was appointed general counsel for the plaintiffs and all persons claiming to be or to have been stockholders of the Fund were enjoined from commencing any other or further actions for any of the relief sought in said actions or for a determination of any question of law or fact raised therein, except by means of intervention if permitted by the Court.

5. The plaintiffs have conducted extensive discovery proceedings including the service of two sets of interrogatories, the examination of numerous documents and the oral examination of several officers and directors of the Fund and the Manager. Plaintiffs believe that the evidence obtained during the discovery proceedings firmly supports the claims made by them on behalf of themselves and other persons similarly situated in this consolidated action and clearly shows that the defendants violated the Investment Company Act and the Securities Exchange Act as claimed

herein. Accordingly, the plaintiffs intend to move for summary judgment on the issue of liability.

6. The plaintiffs respectfully submit that this Court should determine that this consolidated action may be maintained as a class action since the plaintiffs have satisfied the requirements of Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure. The requirements of Rule 23 are discussed in detail in the plaintiffs' memorandum of law and will not be repeated at length herein. However, I will briefly in this affidavit refer to some of the matters relating thereto.

7. There can be no dispute that the class is so numerous that joinder of all members is impracticable. It appears from the reports issued by the Fund that there are at least 50,000 persons who purchased shares of the Fund during the period March 28, 1968 to April 24, 1970, and allegedly paid false and inflated prices for their shares as a result of the defendants' improper evaluation of restricted securities in the portfolio of the Fund. March 28, 1968 is the first day restricted securities were included in the Fund's portfolio, and April 24, 1970 is the date of the prospectus in which the defendants for the first time disclosed to the investing public the methods used by them in valuing restricted securities in the portfolio of the Fund and certain information relating thereto.

8. There can also be little doubt that there are common questions of law and fact which warrant the maintenance of this consolidated action as a class suit. Indeed, the basis for the Court in having previously consolidated these actions and having enjoined any additional actions from being brought by members of the class was the recognition

that the claims of the members of the class were based upon common issues of law and fact. These common questions of law and fact include the following:

(a) Whether the prospectuses issued by the Fund during the period in question were false and misleading in that they failed to state that the Fund would purchase restricted securities;

(b) Whether the prospectuses were false and misleading because of their failure to state the risks involved with respect to the purchase of restricted securities;

(c) Whether the prospectuses were false and misleading in failing to state the methods utilized by defendants in valuating the restricted securities;

(d) Whether the prospectuses were false and misleading in stating that the Fund's shares were being offered at net asset value, when a "good faith" determination of the value of restricted securities of the Fund was not made;

(e) Whether the periodic reports issued by the Fund were false and misleading in failing to disclose the methods used in valuing restricted securities in the portfolio of the Fund and information relating thereto and with regard to the net asset value of shares of the Fund and the investment performance of the Fund;

(f) Whether it was improper and a violation of the Investment Company Act Section 2(a)(41) and Rule 2a-4 thereunder and Rule 10b-5 for defendants to have valued restricted securities in the Fund portfolio by applying an absolute dollar discount to the market quotations for unrestricted securities of the same class, without regard to other relevant factors;

(g) Whether it was improper and a violation of the Investment Company Act Section 2(a)(41) and Rule 2a-4 thereunder, and Rule 10b-5 for defendants to have valued the convertible notes in the Fund's portfolio by assuming a constant percentage premium over the conversion value of the common stock into which said notes were convertible, without regard to other relevant factors and by automatically assuming that said premium would equal the discount attributable to the fact that said securities were restricted without regard to other relevant factors;

(h) Whether it was improper and a violation of the Investment Company Act Section 2(a)(41) (formerly Section 2(a)(39)) and Rule 2a-4 thereunder, and Rule 10b-5 for defendants to have valued restricted securities in the Fund's portfolio by applying a constant percentage discount to the market quotations for unrestricted securities of the same class, without regard to other relevant factors; and

(i) Whether the methods used by defendants in valuing restricted securities in the Fund's portfolio satisfied the requirements of Section 2(a)(41) and Rule 2a-4 that restricted securities be valued at fair value as determined in "good faith" by the board of directors and, if not, whether defendants are liable to the class for having violated the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

9. The claims of the plaintiffs are typical of the class. Plaintiff Sanders purchased shares on numerous occasions throughout the period involved from March 28, 1968 to April 24, 1970, and plaintiffs Taussig and Shaev also purchased shares of the Fund on several occasions during this period. All of the aforesaid purchases were allegedly made

at false and inflated prices as a result of the defendants' improper valuation of restricted securities in the portfolio of the Fund.

10. As shown in our accompanying memorandum of law, two factors of great importance in determining whether the plaintiffs will "fairly and adequately protect the interests of the class" as required by Rule 23, are whether the plaintiffs will vigorously prosecute the litigation and whether their attorneys are qualified, experienced and generally able to conduct the litigation. It is evident from the extensive discovery proceedings which have already taken place that the plaintiffs have vigorously prosecuted this action. Furthermore, I respectfully submit to the Court that our firm, as general counsel for the plaintiffs, possesses the qualifications necessary to properly represent the interests of the class in this action. We have had considerable experience in the field of corporate practice and, in particular, in stockholder's actions. The other members of my firm and I have tried and argued cases in the federal courts including the Supreme Court of the United States, in the New York State Courts and the courts of a number of other states. I take the liberty of bringing the following specific matters to the attention of the Court.

11. On March 17, 1971, Judge Milton Pollack, presiding at a settlement hearing in a derivative action entitled *Zerkle, et al.* v. *Cleveland-Cliffs Iron Co., et al.*, 70 Civ 2507, made the following comment about our firm:

> "I know of your standing in the community and also your standing at the Bar, and have a very high opinion of the expert knowledge, competence and fairness with which you conduct derivative litigation."

12. In a series of class actions entitled *Berland* v. *Great American Industries, et al.*, 66 Civ. 1755, et al., Judge Mansfield appointed our firm as General Counsel for all the plaintiffs. Thereafter, in deciding a motion to declare the consolidated action as a class action, Judge Mansfield had occasion to refer to his earlier appointment of our firm as General Counsel for the consolidated action. In that connection, in his opinion (48 F.R.D. 121 (S.D.N.Y. 1969)), he said about our firm's representation of the plaintiffs (at p. 127):

> "They are represented by outstanding counsel who are experienced in the conduct of stockholders' litigation and aware of their responsibilities."

He added (at p. 127):

> "We are satisfied, therefore, that both plaintiffs and their counsel would adequately represent the class in that there is no likelihood that they would handle or dispose of the litigation in a collusive manner or act in any way antagonistic to the interests of the class."

At a later point (at p. 128) he referred to our firm as the plaintiffs' "high-calibre, experienced counsel." The actions were recently settled with substantial benefits gained by the members of the class.

13. Finally, it is clear that a class action is superior to any other available method for the fair and efficient adjudication of this controversy. Indeed, since the damages to any single member of the class may be insufficient to justify the commencement of a separate action for the relief sought herein, a class action is no doubt the only meaningful method by which the rights of the members of the class

can be effectively enforced. Moreover, it is evident from the Order of consolidation enjoining any further actions by members of the class that it was contemplated that the plaintiffs in these actions would represent the interests of other members of the class and that the claims of other members of the class would be enforced through the maintenance of this action as a class suit.

14. With respect to the question of notice to the members of the class, we assume that the defendants have the names and addresses of the persons who purchased shares of the Fund during the period involved and that an appropriate notice can be sent to these persons in one of the regular mailings which the Fund makes to its shareholders.

15. We respectfully submit that in accordance with the authorities set forth in our memorandum of law any costs relating to the notice such as the preparation of the notice should be paid by the defendants since the defendants are better able to bear the cost of the notice, the defendants, in obtaining an order enjoining any other members of the class from bringing similar actions against them, clearly evidenced a desire to have this action maintained as a class action and to have the rights of all members of the class determined herein and the claims asserted against the defendants herein for violation of the Investment Company Act and the Securities Exchange Act are well founded as plaintiffs will show on their motion for summary judgment on the issue of liability. We respectfully suggest, however, that the Court defer a determination as to who should pay for the costs of notice or how the costs should be allocated between the parties pending the submission of plaintiffs' motion for summary judgment on the issue of liability. The Court will, no doubt, be in a better position to make a de-

Supporting Affidavit of Donald N. Ruby

termination on this question after a review of the papers submitted in connection with said motion.

16. We respectfully submit that it would be a fair exercise of discretion for this Court under the circumstances in this case to require the defendants to pay the cost of notice to the members of the class, particularly if the Court concludes after reviewing the papers submitted in connection with plaintiffs' motion for summary judgment on the issue of liability that the plaintiffs' claims have substantial merit.

17. It is respectfully submitted that the plaintiffs' motion for an order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, determining that this action may be maintained as a class action on behalf of the persons who purchased shares of the Fund during the period March 28, 1968 to April 24, 1970, should be granted.

/s/ Donald N. Ruby

[Sworn to March 30, 1973]

Affidavit of Leon H. Tykulsker Sworn to April 13, 1973

UNITED STATES DISTRICT COURT

Southern District of New York

[same title]

State of New York,
County of New York, *ss.*:

Leon H. Tykulsker, being duly sworn, says:

1. I am a member of the firm of Guggenheimer & Untermyer, attorneys for defendants Oppenheimer Management Corporation, Oppenheimer & Co., Leon Levy and Jack Nash (herein called the "Oppenheimer Defendants"). I make this affidavit in connection with plaintiffs' motion for an order pursuant to Rule 23(c)(1) FRCP to authorize maintenance of the consolidated action as a class suit on behalf of persons who purchased shares of stock of defendant Oppenheimer Fund, Inc. (the "Fund") during the period March 28, 1968 to April 24, 1970.

Context in Which Actions Arise

2. This consolidated action is brought in connection with plaintiffs' claims that the Board of Directors of the Fund overvalued restricted securities in the portfolio of the Fund and that adequate disclosure with respect to such restricted securities was not made by the Fund. The Fund is an open-end investment company registered under the Investment Company Act of 1940. Its shares are registered under the Securities Act of 1933. Fund shares are offered

for sale and sold continuously by the Fund. Shareholders who wish to liquidate their interests do so by selling the shares back to the Fund.

3. Among shareholder accounts of the Fund is the Oppenheimer Systematic Capital Accumulation Program ("OSCAP"). OSCAP is also an investment company registered under the Investment Company Act of 1940 but it is an investment company of the unit investment trust type. It is organized as a custodianship, with State Street Bank and Trust Company of Boston, Massachusetts, as the Custodian. OSCAP does not have a Board of Directors and it issues "plans" to participants, each of which represents an undivided interest in units of Fund shares. When the account of the OSCAP planholder is liquidated, the Custodian sells the Fund shares to the Fund and the proceeds are credited to the OSCAP planholder.

4. As of March 31, 1973 the Fund had under management net assets of approximately $523,243,571. As of said date there were 67,726,541 shares of the Fund outstanding owned by approximately 86,063 shareholder accounts and by OSCAP for 87,894 accounts of OSCAP planholders. The net asset value per share was $7.72. As of said date the plaintiffs Shaev owned 8+ (a fraction) shares, plaintiff Taussig owned 1,868+ shares, and plaintiff Sanders had credited to his account as a planholder of OSCAP 46+ shares.

5. During the period from March 26, 1969 through June 18, 1969, when plaintiffs instituted their respective actions the number of Fund shares outstanding ranged from approximately 30,995,000 to 33,750,000 shares. The number

of shares which plaintiffs owned or had an interest in as of the date they instituted their respective actions were as follows:

Plaintiffs	*Date action instituted*	*No. of Shares*
Sanders	March 26, 1969	209.823*
Taussig	May 12, 1969	2369.365
Shaev	June 18, 1969	45.071

6. During the period which plaintiffs propose to include in their class action (March 28, 1968 to April 24, 1970), the alleged overvaluation of restricted securities constituted a relatively insignificant segment of the portfolio of the Fund. We do not know the details of plaintiffs' claims as to overvaluation, since they have failed to answer the interrogatories on this subject propounded by the Oppenheimer Defendants. If it be assumed that plaintiffs claim an overvaluation of as much as 10%, the amount involved is well below 1% of the Fund's assets. The relative amounts involved can be seen from the following table (derived from quarterly reports to Fund shareholders and rounding off the thousands):

Date	Net Assets of Fund	Fund Valuation of Restricted Securities	10% of Fund Valuation of Restricted Securities	
			Amount	Percentage of Fund Assets
Mar. 31, 1968	$150,577,000	$ 1,005,000	$ 100,000	1/15 of 1%
Sept. 30, 1968	232,083,000	19,491,000	1,949,000	4/5 of 1%
Mar. 31, 1969	265,279,000	8,453,000	845,000	3/10 of 1%
Sept. 30, 1969	298,899,000	7,033,000	703,000	3/10 of 1%
Mar. 30, 1970	315,229,140	3,073,000	307,000	1/10 of 1%

• • • • •

* Number of shares in which interested under OSCAP plan.

Notice

13. Plaintiffs seek to maintain this consolidated action a class action pursuant to FRCP Rule 23(b)(3). Rule 23 (c)(2) requires that in any class action maintained under subdivision (b)(3), the Court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

14. The effort and expense involved in ascertaining and giving notice to members of the class in the instant action can be expected to be considerable. I am informed that during the period designated by plaintiffs (namely, March 28, 1968 to April 24, 1970) there were approximately 121,000 shareholder accounts which purchased Fund shares. Of this total, approximately 41,400 were new shareholder accounts of the Fund, approximately 54,600 were new purchasers of OSCAP plans, and approximately 25,000 were existing shareholder accounts of the Fund or existing holders of OSCAP plans. Obviously there would be a significant decrease in the numbers of shareholders accounts involved if the relevant period were deemed to terminate on a date earlier than that proposed by plaintiffs.

15. The expense of giving notice to members of the class can be expected to be considerable in view of the size of the class—namely, approximately 121,000 accounts. Plaintiff's counsel offhandedly states in his moving affidavit (at p. 14) that he "assumes" the defendants have the names and addresses of the persons who purchased shares of the Fund during the period involved and that an appropriate notice can be sent to them in one of the

regular mailings which the Fund makes to its shareholders. However, in fact it will require considerable labor and expense to ascertain the names and addresses of all such purchasers, since the current list of shareholders of the Fund includes many who are not members of the class and a considerable number of members of the class are probably no longer current shareholders. Moreover, mailing a notice, as suggested by plaintiff's counsel, to current shareholders is objectionable on a number of grounds. First, such notice will not reach members of the class who are no longer shareholders. Second, such notice will be received by many shareholders who are not members of the class and is likely to cause substantial damage to the Fund and its shareholders; such a notice may well panic unsophisticated shareholders into believing their investments are endangered with consequent large scale requests for the Fund to redeem. Third, the cost of a mailing to current shareholders will be substantial. I am informed that a single letter mailing to current 174,000 shareholder accounts will cost about $21,300, which amount includes postage but does not include the cost of printing the notice.

16. Not unexpectedly, plaintiff's counsel urges that the cost of any notice to the class should be borne by the defendants. His contentions in this respect are without merit. As set forth in the memorandum of law submitted on behalf of the Oppenheimer Defendants, the cost of a class action notice is normally to be borne by plaintiffs, since they have initiated the litigation. Defendants have already been put to very considerable expense in connection with these litigations—not only for legal services but also in terms of executive time required to meet the dis-

covery demands of plaintiffs. Plaintiffs' cavalier approach to such expenses is evidenced by their contention that notice costs should be paid by the defendants because they are better able to bear them. (Plaintiffs' Moving Affidavit, p. 15). Only after plaintiffs have adequately established that there is a substantial likelihood that they will prevail have some courts given this any consideration at all.

17. In this connection, as shown in our memorandum of law, courts have been concerned that costs should not be paid in the first instance by defendants where there is no showing that plaintiffs will be able to reimburse the defendants in the event plaintiffs should not prevail. No such showing of financial responsibility of the plaintiffs has been made in this litigation.

18. Plaintiff's counsel also urges that costs should be borne by the defendants because of defendants alleged desire to have this action maintained as a class action as evidenced by defendants having moved for consolidation of the three actions. This is truly a very high price to ask defendants to pay for seeking modest relief from the harassment to which defendants were subjected by reason of the three duplicatory actions instituted by plaintiffs. In fact, such consolidation benefited all parties and this Court through the avoidance of duplication of effort and expense.

Deferral of Notice

19. Counsel for plaintiffs suggests that decision as to the form of notice, the method of giving notice and as to who shall bear the costs of notice are all matters which should be deferred until plaintiffs have had an opportunity

to move for summary judgment on the issue of liability. We do not oppose this suggestion although we anticipate that there probably will be disputes as to critical questions of fact which make it doubtful that liability can be determined by such a motion. However, as a result of such a motion we have no doubt that light will be shed on the nature of plaintiffs' claims and their lack of merit.

20. The ultimate questions are whether the restricted securities were carried by the Fund at "fair value as determined in good faith by the board of directors" as required by §2(a)(41)(B)(ii) of Investment Company Act of 1940 and whether the Fund's disclosures relating to restricted securities, having due regard for the materiality thereof, complied with statutory requirements as they existed from time to time.

21. The facts will demonstrate that the defendants complied with the law on both issues. The prospectuses and periodic reports which plaintiffs claim were inadequate were filed with and reviewed by the Securities and Exchange Commission without any complaint from it regarding inadequate disclosure—a factor which is of considerable significance in view of the Commission's extensive jurisdiction over the administration of the securities laws.

22. We have no doubt that the undisputed facts will also demonstrate that the directors of the Fund were men of outstanding character and experience, who exercised sound business judgment in connection with the affairs of the Fund and that they fully complied with the applicable statutory and industry standards in valuing the restricted securities here involved and in making disclosure concerning them. During the time in question the highly qualified

Affidavit of Leon H. Tykulsker Sworn to April 13, 1973

Board of Directors of the Fund included among others, the following:

Congressman Emanuel Celler;
Murray Graham—formerly Senior Vice-President of R.H. Macy & Co.;
Eric Hauser—private investor;
Joseph M. McDaniel, Jr.—formerly Secretary of and now consultant to the Ford Foundation;
Sidney M. Robbins—Professor of Finance, Graduate School of Business, Columbia University;
Dean Mylosis—a general partner in City Associates;
Edmund T. Delaney, Esq.—an attorney, formerly a partner in Townsend & Lewis, who had been counsel for the Fund;
Leon Levy and Jack Nash, two senior partners of defendant Oppenheimer & Co. who were also senior officers of defendant Oppenheimer Management Corporation and who have had extensive experience in the securities industry.

23. If the Court determines that this consolidated action may be maintained as a class action on behalf of persons who purchased shares of the Fund, such class should be limited to those who purchased Fund shares during the period from March 28, 1968 to a date which is not later than April 25, 1969. It is respectfully submitted that in all of the circumstances here present, the Court should not require the defendants to pay the costs of notice to members of the class.

/s/ Leon H. Tykulsker
Leon H. Tykulsker

[Sworn to April 13, 1973]

Affidavit of Robert Galli Sworn to May 23, 1973

UNITED STATES DISTRICT COURT

Southern District of New York

[same title]

State of New York,
County of New York, *ss.*:

Robert G. Galli, being duly sworn, says:

1. I am Secretary of defendant Oppenheimer Fund, Inc. ("Fund"), and Administrative Vice President and Secretary of defendant Oppenheimer Management Corporation.

2. I make this affidavit in connection with plaintiffs' proposal that the notice to be sent to class members should be included in a regular mailing of the Fund to its shareholders. This proposal should be rejected by the Court because any such mailing will not reach a very substantial number of shareholder accounts who are members of the class specified by plaintiffs and at the same time such a mailing can be expected to have a serious adverse effect on the Fund and its current shareholders.

3. The basic facts are as set forth in the affidavit of Leon H. Tykulsker, sworn to April 13, 1973, and submitted in behalf of the Oppenheimer Defendants ("Tykulsker Affidavit"). As set forth in said affidavit, as of March 31, 1973 there were over 173,000 shareholder accounts holding Fund shares (Tykulsker Aff., Par. 4). From March 28, 1968—

April 24, 1970, the period specified by plaintiffs, there were approximately 121,000 shareholder accounts which purchased Fund shares (Tykulsker Aff., Par. 14). Even if all of these accounts remained to date, there would be at least 52,000 shareholder accounts which did not purchase shares during the relevant period and who are not members of the class specified by plaintiffs. In fact, however, the number of shareholder accounts which are not members of this class is substantially greater. Since April 24, 1970, the end of the period, approximately 68,491 new shareholder accounts have been opened. In addition to these new accounts, there are many shareholder accounts existing prior to March 28, 1968 which did not buy shares during the relevant period and which are still shareholder accounts at this time. Thus, a very substantial number of current shareholder accounts are not members of the class designated by the plaintiffs.

4. There is a constant turnover of shareholders of the Fund. Many accounts which acquired shares during the relevant period are no longer current accounts. Therefore, even if a notice were sent to all current accounts, it would not reach the members of the class who are no longer current. Since a separate mailing would be required to reach these class members, I urge that the mailing to all class members be made separately and not as part of a mailing to all current accounts because of the substantial injury to the Fund and its shareholders which can result from such a general mailing.

5. I do not believe it is necessary for me to dwell at length on the current loss of investor confidence in the stock market and the uncertain conditions under which that

market exists at this time. Since 1970 the market trend has generally been down, and this has been especially true in the last four to five months. As a result, the mutual fund industry has in the last year or so been in a period where net redemptions have exceeded sales. This trend has also hit the Oppenheimer Fund, when for the first time in its history, during the three months period February-April 1973 redemptions exceeded sales, so that net worth was reduced by a little over 1% by reason of such redemptions.

6. Any event which raises questions in the investor's mind in this uncertain climate is likely to cause him to redeem his mutual fund shares. This has been the experience of the Fund and of the mutual fund industry as a whole. A broadcast mailing of a class action notice to all of the current shareholders of the Fund, even though a very large number of them have no direct interest in the suit, will undoubtedly cause shareholders to redeem their shares; and it is possible that such a notice may precipitate a substantial demand for redemption, which could well have some of the unfortunate effects of a run on a bank. In order to meet redemption calls, the Fund's liquid assets are consumed, thereby preventing the Fund from taking advantage of investment opportunities, and, in addition, the Fund will be required to make forced sales of securities in a very poor market—all to the detriment of the Fund and its shareholders.

7. In view of the possibilities of serious harm to the Fund and its shareholders, the large number of current shareholders who are not members of the class designated by plaintiffs and the fact that many members of the class are not current shareholders, the Court should not require

Affidavit of Robert Galli Sworn to May 23, 1973

notice to the class to be mailed to all current shareholder accounts.

/s/ Robert G. Galli
Robert G. Galli

[Sworn to May 23, 1973]

Memorandum of Defendants Oppenheimer Management Corp., et al., in Connection With Plaintiffs' Request for Oral Deposition of Witnesses in Boston, Massachusetts

UNITED STATES DISTRICT COURT
Southern District of New York

[same title]

This memorandum is submitted on behalf of defendants Oppenheimer Management Corporation, Oppenheimer & Co., Leon Levy and Jack Nash (the "Oppenheimer Defendants") in support of their application to require the pretrial discovery of Investment Companies Services Corporation ("ICSC") to be conducted on written interrogatories unless the plaintiffs pay the expense, including reasonable attorneys' fees, of attendance of defendants' counsel in Boston, Massachusetts, the place where plaintiffs propose to take the depositions on oral examination of the ICSC witnesses.

Discovery of a limited nature was authorized by the Court at a hearing on May 23, 1973 in connection with the class action motion.

Reference is made to the letters dated June 6 and 14, 1973 from Wolf, Popper, Ross, Wolf & Jones, counsel for plaintiffs, to Hon. Thomas P. Griesa, ("Wolf letters") and the letters dated June 8 and 14, 1973 from Guggenheimer & Untermyer, counsel for the Oppenheimer Defendants, to Hon. Thomas P. Griesa, ("Guggenheimer letters") concerning the discovery desired by plaintiffs with respect to notice to class members. The Wolf letter of June 6 and the Guggenheimer letter of June 8 indicate that the matters to be covered are limited in number as follows:

Memorandum of Defendants Oppenheimer Management Corp., et al., in Connection With Plaintiffs' Request for Oral Deposition of Witnesses in Boston, Massachusetts

(1) the number of persons who purchased shares of Oppenheimer Fund, Inc. ("the Fund") during the period March 28, 1968 to April 24, 1970;

(2) whether said persons can be identified through reasonable effort;

(3) if so, the number of said persons who are presently shareholders of the Fund;

(4) the cost, if any, of giving individual notice to said persons who are still shareholders of the Fund if notice is sent to them by the Fund in one of its regular mailings which the Fund sends to its shareholders; and

(5) the cost of giving individual notice to members of the class who are not current shareholders of the Fund.

As noted in the Guggenheimer letter of June 8, the witnesses and records necessary to supply this information are located in Boston, Massachusetts.

The information sought by the plaintiffs' discovery is factual and statistical in nature. The witnesses are employees of ICSC who would have to compile the requested data. They are disinterested and not hostile; neither credibility, character nor demeanor is likely to be an issue; and, therefore, cross-examination would not be necessary. Moreover, to the extent that the witnesses require time to assemble and compile information and statistical data, it may be possible that the deposition procedure could not be completed in a single day of examination.

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Letter dated June 25, 1973 to Hon. Thomas P. Griesa from John F. Davidson

TOWNSEND & LEWIS

[Letterhead]

June 25, 1973

Hon. Thomas P. Griesa
United States District Judge
United States Courthouse
Foley Square
New York, N.Y. 10007

Re: *Sanders* v. *Levy*
69 Civ. 1242

Dear Judge Griesa:

Reference is made to Memorandum of the Oppenheimer Defendants in connection with Plaintiffs' Request for Oral Deposition of Witnesses in Boston, Massachusetts. On behalf of the unaffiliated defendants Edmund T. Delaney and Emanuel Celler, we are writing this letter to advise you that we join in the statements set forth in that Memorandum and request that the court require this discovery to be conducted by written interrogatories and cross-interrogatories unless the plaintiffs pay, in the first instance and subject to ultimate taxation of costs, the expenses of attendance of an attorney for the unaffiliated defendants at the place where the deposition is to be taken,

Letter dated June 25, 1973 to Hon. Thomas P. Griesa from John F. Davidson

including a reasonable attorneys' fee to be fixed by the court.

Respectfully yours,

JOHN F. DAVIDSON

cc: WOLF POPPER ROSS WOLF & JONES
Attorneys for Plaintiffs

GUGGENHEIMER & UNTERMYER
Attorneys for Oppenheimer Defendants

WEISMAN CELLER SPETT MODLIN & WERTHEIMER
Attorneys for Oppenheimer Fund

Letter dated June 26, 1973 to Hon. Thomas P. Griesa from Gerald Gordon

WEISMAN, CELLER, SPETT, MODLIN & WERTHEIMER

[Letterhead]

June 26, 1973

Hon. Thomas P. Griesa
United States District Judge
United States Courthouse
Foley Square
New York, N.Y. 10007

Re: *Sanders* v. *Levy*
69 Civ. 1242

Dear Judge Griesa:

Reference is made to the Memorandum of the Oppenheimer Defendants in connection with Plaintiffs' Request for Oral Deposition of Witnesses in Boston, Massachusetts. On behalf of defendant Oppenheimer Fund, Inc., we are writing this letter to advise you that we, like counsel for the unaffiliated defendants, also join in the statements set forth in the Memorandum and request that the Court require this discovery to be conducted by written interrogatories and cross-interrogatories unless the plaintiffs pay, in the first instance and subject to ultimate taxation of costs, the expenses of attendance of an attorney for defendant Oppenheimer Fund, Inc., at the place where the deposition

Letter dated June 26, 1973 to Hon. Thomas P. Griesa from Gerald Gordon

is to be taken, including a reasonable attorneys' fee to be fixed by the Court.

Respectfully yours,

GERALD GORDON

GG:eca
by hand

cc: WOLF POPPER ROSS WOLF & JONES, Esqs.
Attorneys for Plaintiffs

GUGGENHEIMER & UNTERMYER
Attorneys for Oppenheimer Defendants

TOWNSEND & LEWIS, Esqs.
Attorneys for unaffiliated Defendants

Plaintiffs' Memorandum in Reply to Defendants' Memorandum of June 25, 1973 Concerning Proposed Discovery in Boston

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Preliminary Statement

Plaintiffs respectfully submit the following memorandum of law in reply to the memorandum served and filed by the defendants on June 25, 1973 in connection with the plaintiffs' proposed discovery of defendants' agents in Boston, Massachusetts. The proposed discovery is concerned with determining the appropriate method of giving notice to the class in this case and the cost of such notice. In a letter to the Court dated June 6, 1973, this firm indicated that discovery was sought with respect to the following matters:

(1) the number of persons who purchased shares of Oppenheimer Fund, Inc. (the "Fund") during the period March 28, 1968 to April 24, 1970;

(2) whether said persons can be identified through reasonable effort;

(3) if so, the number of said persons who are presently shareholders of the Fund; and

(4) the cost, if any, of giving individual notice to said persons who are still shareholders of the Fund if notice is sent to them by the Fund in one of its regular mailings which the Fund sends to its shareholders.

In a responding letter dated June 8, 1973, counsel for the defendants indicated that they did not object to the

above outlined scope of examination "other than to note that it should be amplified to cover also the cost of giving individual notice to members of the class who are not current stockholders." Defendants' counsel also indicated at that time that the information could be obtained only by questioning employees of the Investment Companies Services Corporation (ICSC), whose offices are located in Boston, Massachusetts because the information and underlying records are available only at the ICSC's offices. In addition, defendants' counsel requested that the Court impose upon plaintiffs the obligation to advance the expenses of defendants' counsel for attending an oral deposition in Boston or the travelling expenses of the witnesses if the examination is to be conducted in New York and in the alternative suggested that the examination be conducted upon written interrogatories pursuant to Rule 31. In a responding letter dated June 14, 1973, plaintiffs' counsel indicated to the Court that it appeared that the examination could be most expeditiously and effectively conducted in Boston, that an oral examination would be the most efficient manner of accomplishing this discovery, and that the defendants' counsel had not shown any special circumstances or good cause which could justify an order requiring plaintiffs to advance their expenses. Defendants' brief dated June 25, 1973 appears to be in the nature of an application for a protective order granting such relief, although no motion to that effect has been filed pursuant to Rule 26 (c). In response, plaintiffs' respectfully request the Court to consider the following points.

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In the instant case, although the scope of this particular discovery is limited to the question of notice, and the wit-

nesses, as defendants suggest, may be disinterested, that does not solve the problem. Indeed, the Court itself has expressed some doubt as to why it should be difficult or costly to determine the names and addresses of members of the class. (See transcript of 5/23/73 at 18-20.) Plaintiffs also fail to perceive the problem as to why it should be difficult for the defendants to fully identify the members of the class and to notify them by enclosing a notice with one of the Fund's regular mailings to its stockholders. Plaintiffs believe that the facts relating to this matter can be obtained most efficiently and expeditiously by means of a deposition upon oral examination. The proposed discovery will go into the procedures available for ascertaining the names and addresses of the members of the class and for sending out notice to those persons in one of the Fund's regular mailings including the use of computers in connection therewith and consequently it may necessitate a fairly precises series of questions to fully ascertain the pertinent facts. In a situation like this, it is often difficult to frame in advance exactly those questions which are needed to elicit completely the necessary information, and to require the plaintiffs' examination to be conducted by means of written interrogatories, cross interrogatories and supplemental interrogatories would be unduly time consuming and inefficient.

• • • • •

Affidavit of Donald Ruby Sworn to December 12, 1973

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

DONALD N. RUBY, being duly sworn deposes and says:

1. I am a member of the firm of Wolf Popper Ross Wolf & Jones, general counsel for the plaintiffs in this consolidated action. This affidavit is submitted in support of the plaintiffs' motion for an Order pursuant to Rule 23(c)(1) of the FRCP declaring that this consolidated action may be maintained as a class suit and is directed, in particular, to the delineation of the class and the method and form of giving notice to members of the class.

2. Plaintiffs have moved to have this consolidated action maintained as a class suit on behalf of persons who purchased shares of Oppenheimer Fund ("Fund") during the period March 28, 1968 to April 24, 1970. Plaintiffs wish to modify their application relating to the description of the class and request that the consolidated action be maintained as a class suit on behalf of persons who purchased shares of the Fund during the period March 28, 1968 to April 24, 1970 *and* who, like the plaintiffs, are still stockholders of the Fund (or more precisely who are still stockholders on a specified date prior to sending out the Notice (the "record date")).* This modification in the

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* This date would be the same record date as used by the Fund for determining its current shareholders for purposes of sending out its regular mailing which could also include the Notice to members of the class in this case.

scope of the class will help simplify the issues in the case and will obviate the need for further discovery, it will help to reduce the cost of giving notice to the members of the class so that the action can proceed as a class suit, and it will facilitate the distribution of a recovery to the members of the class if liability is established, or if the action is otherwise settled by the parties.

3. First of all, the elimination of persons from the class who, unlike the plaintiffs, are no longer shareholders of the Fund will help to eliminate the issues raised by the defenses set forth in defendants' amended answers to the effect that the defendants are entitled to a set-off against those persons who purchased shares during the period March 28, 1968 to April 24, 1970 and thereafter redeemed their shares for allegedly excessive amounts as a result of the overvaluation of restricted securities in the portfolio of the Fund and will obviate the need for plaintiffs to conduct any discovery relating to said defenses as allowed by the Court in connection with the granting of defendants' motions for leave to serve amended answers. Secondly, if the description of the class is not modified so as to eliminate those persons who are no longer shareholders of the Fund, the cost of giving notice to the class (which would then be in excess of $20,000) would far exceed the amount that plaintiffs are in a position to afford and thus plaintiffs would be unable to continue prosecution of this consolidated action as a class suit to vindicate the rights of all those members of the class who purchased shares during the period March 28, 1968 to April 24, 1970 and are still shareholders of the Fund. As indicated in our accompanying supplemental memorandum of law, the plaintiffs should be given wide latitude in describing the

class, the class should be described so as to facilitate the maintenance of a class action and the interests of the members of the class whom plaintiffs seek to represent (in this case persons who purchased shares during the aforementioned period and are still shareholders of the Fund) certainly should not suffer simply because the class might be described in broader terms. Finally, the elimination of persons who are no longer shareholders of the Fund will facilitate the distribution of any recovery which is obtained in this action and thus aid in the management of the action since it will be a simple thing for the Fund to distribute any recovery to the members of the class who are shareholders of the Fund.

4. With respect to the question of notice, Rule 23(c)(2) provides that:

> "the Court shall direct to the members of the class the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort"

As indicated in our supplemental memorandum of law, the language of Rule 23(c)(2) means that the Court shall cause notice to be given as it shall direct. Under the provisions of said Rule, the Court has certain discretion in determining how notice should be given so long as the provisions of the Rule and the requirements of due process are satisfied. In making this determination, the Court should be guided by the principle that Rule 23 should be liberally construed with the view to enhancing the use of class actions as a means of vindicating the rights of persons who, as in the instant case, have been damaged as a result of alleged violations of the federal securities laws.

5. With the foregoing in mind, plaintiffs respectfully request that the Court direct that notice be sent to the members of the class in the following manner: A Notice in appropriate form directed to persons who purchased shares of the Fund during the period March 28, 1968 to April 24, 1970 and who are still shareholders of the Fund should be prepared at plaintiffs' expense and should then be inserted in a regular mailing which is sent by the Fund to all of its current stockholders (approximately 171,000) of which defendants' estimate approximately 100,000 would be members of the class. Since actual individual notice will be sent by mail to all members of the class, this method of giving notice will clearly satisfy the provisions of Rule 23 and the requirements of due process. As indicated in our supplemental memorandum of law, the Notice provisions in Rule 23 are designed to satisfy the requirements of due process and the requirements of due process are satisfied when, as in the instant case, the Notice which is sent to the members of the class is "reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action". The fact that the plaintiffs cannot state the exact number of people in the class or identify them by name at this time, does not, as shown in our supplemental memorandum of law, preclude the maintenance of a class action and is irrelevant for purposes of determining whether the notice provisions of Rule 23 and the requirements of due process have been satisfied.* What is important is that actual individual notice by mail will be sent to all members of

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* If plaintiffs are subsequently successful in establishing liability and there is a recovery in the action, the names and addresses of the class can be then ascertained so that a recovery can be sent to them.

the class apprising them of the pendency of the action and of their right to request exclusion pursuant to the provisions of Rule 23. Moreover, since the class has been defined with precision (all persons who purchased shares of the Fund between March 28, 1968 and April 24, 1970 and were still shareholders of the Fund as of the record date) there will be no problem in entering a judgment in this action, whether favorable or not to the class, pursuant to Rule 23(c)(3) describing the persons who are bound by the judgment.

6. The insertion of the Notice in a regular mailing by the Fund to its shareholders will avoid unnecessary postage charges and will thus reduce the costs of giving notice to the class. As indicated in our supplemental memorandum of law, this procedure has been favorably referred to by the Courts. Plaintiffs will pay for the cost of inserting the Notice into one of the regular mailings by the Fund. We have been advised by the Transfer Agent of the Fund that there is a charge of $.01 per insert. We estimate that the cost of preparing an appropriate notice directed to the members of the class and having it inserted into a regular mailing by the Fund to all of its current shareholders will cost approximately $5,000. Plaintiffs are prepared to pay these expenses.

7. While the Court of Appeals for the Second Circuit in the *Eisen* case indicated that the plaintiffs should normally pay the costs of notice, there is no reason why the costs of notice should not be minimized so as to enable the plaintiffs to meet this burden and thus facilitate the maintenance of a class action. Plaintiffs herein are not seeking by virtue of the procedure proposed by us to

depart from the rules set forth in *Eisen,* (though we note, of course, that the rules laid down in *Eisen* relating to notice may be liberalized as a result of the Supreme Court's review of the case) but rather are requesting the Court to direct that notice be given in a manner consistent with the provisions of Rule 23 and the requirements of due process, which they will be able to afford. To the extent that it is feasible and consistent with the provisions of the Rule and due process, we submit that the Court should exercise its discretion to minimize the costs of Notice so as to facilitate the maintenance of this consolidated action as a class suit.

8. The defendants have suggested in prior affidavits submitted to this Court that notice should not be sent out in the manner proposed by plaintiffs since it would be received by some present stockholders of the Fund who were not members of the class and that this would have an alleged adverse effect on the Fund and its current shareholders. We fail to understand the defendants' contention since the Fund has since 1970 apprised its shareholders of the pendency of this action in its proxies, prospectuses, and annual reports, no less than thirteen times. We have annexed hereto and marked "Exhibit A" a copy of pages 23 and 24 of the Fund's prospectus of April 30, 1973 which was forwarded to shareholders of the Fund and was filed with the Securities and Exchange Commission which contain a description of the claims alleged in the instant case as well as a statement that "in the opinion of counsel to the Fund and that of counsel for the Management Corporation, these suits have no legal merit". The statements contained in the prospectus of April 30, 1973 relating to the instant case are essentially the same as the statements

contained in prior prospectuses, proxies and annual reports of the Fund. Thus, the stockholders of the Fund have been repeatedly apprised of the pendency and nature of this litigation and have been advised by the Fund that in the opinion of their counsel and counsel for the Management Corporation, the suits have "no legal merit". Accordingly, it is difficult to understand defendants' contention that informing the stockholders of the Fund for perhaps the fourteenth time of the pendency of this litigation would result in any adverse effect upon the Fund and its current shareholders. A similar claim by defendants in another class action, which is referred to in our supplemental memorandum of law was specifically rejected by the Court, which noted that the defendants had already apprised its stockholders of the litigation.

9. We respectfully suggest that the defendants' claims of alleged harm are essentially frivolous and are, in fact, motivated by an understandable desire to maximize the costs of giving Notice in this case so as to prevent the action from proceeding as a class suit. If it were necessary to ascertain the names and addresses of the members of the class at this time, so that notice could be sent only to them and to none of the other shareholders of the Fund, it would be necessary for the Transfer Agent of the Fund to obtain this information by going through a process involving the use and programming of computers, which we are advised would cost approximately $16,000. Thus, the total cost of giving notice to the class if it were necessary to ascertain the names and addresses of the members of the class at this time and to send the notices solely to these individuals would be in excess of $20,000. Since plaintiffs are not in a position to agree to pay the costs

of notice in this amount, the defendants would be successful in preventing this action from proceeding as a class suit and would for all intents and purposes have avoided liability to the members of the class without having to risk a determination on the merits. We respectfully submit that the Court should not sanction the defendants' efforts to maximize the cost of notice in order to prevent this action from continuing as a class suit and that the Court should direct that notice be given in the manner proposed by the plaintiffs since this procedure will comply with the provisions of Rule 23 and will meet the requirements of due process while keeping the costs of Notice in an amount which the plaintiffs can afford so that the action can proceed as a class suit.

10. Finally, with respect to the question of whether the Notice that is sent to the members of the class should contain some kind of "opt-in" provision, we respectfully submit that the authorities cited in our supplemental memorandum of law clearly indicate that it would not be proper under Rule 23 to require an affirmative response to this Notice from the class members in order to be included in the class or to be entitled to assert a claim in this action if liability is subsequently established. As indicated in our supplemental memorandum of law, the use of a so-called "opt-in" provision in connection with this Notice has been clearly rejected by the courts in this Circuit.

/s/ Donald N. Ruby
Donald N. Ruby

[Sworn to December 12, 1973]

Affidavit of Donald Ruby Sworn to July 17, 1974

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

DONALD N. RUBY, being duly sworn, deposes and says:

1. I am a member of the firm of Wolf Popper Ross Wolf & Jones and I respectfully submit this affidavit in response to the Court's request for further information in connection with the method by which plaintiffs estimated the damages suffered by the class.

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5. Based upon the foregoing, and upon the reasons set forth in our accompanying memorandum and the prior memoranda submitted in support of the instant motion, it is respectfully requested that the instant motion for class action determination be granted, that the action be declared a class action on behalf of all persons who purchased shares of the Fund between March 28, 1968 and April 24, 1970, that notice be directed to all members of the class in the manner previously proposed by plaintiffs, and that any additional expense which is necessary to restrict the distribution of the class action notice to only those shareholders who comprise the class be borne by the defendants.

/s/ DONALD N. RUBY
Donald N. Ruby

[Sworn to July 17, 1974]

Notice of Motion for Reargument of Defendants Oppenheimer Management Corp., et al., dated June 9, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the Accompanying Memorandum of Law and upon the papers filed with respect to the class action motion, defendants Oppenheimer Management Corporation, Oppenheimer & Co., Leon Levy and Jack Nash (the "Oppenheimer Defendants"), by their attorneys, will move this Court, at the Chambers of Judge Thomas P. Griesa, in Room 607-H, United States Courthouse, Foley Square, New York, N.Y. on the 23rd day of June, 1975, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, pursuant to Rule 9(m) of the General Rules of the Southern District of New York to reargue the class action motion, and for such other and further relief as may be just.

Dated: New York, New York
June 9, 1975.

Notice of Motion for Reargument of Defendants Oppenheimer Management Corp., et al., dated June 9, 1975

GUGGENHEIMER & UNTERMYER
By: LEON H. TYKULSKER
Leon H. Tykulsker.
Attorneys for Oppenheimer Defendants
80 Pine Street
New York, New York 10005
(212) 344-2040

To:

WOLF POPPER ROSS WOLF & JONES
Attorneys for Plaintiffs
845 Third Avenue
New York, New York 10022

WEISMAN, CELLER, SPETT, MODLIN & WERTHEIMER
Attorneys for Defendant Oppenheimer Fund, Inc.
425 Park Avenue
New York, New York 10022

THACHER, PROFFITT & WOOD
Attorneys for Defendants Edmund T. Delaney and Emanuel Celler
40 Wall Street
New York, New York 10005

Notice of Motion for Reargument of Defendant Oppenheimer Fund, Inc., dated June 10, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the accompanying memorandum, the opinion of this Court dated May 15, 1975 and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at the Chambers of Judge Thomas P. Griesa, Room 607-H in the United States Courthouse, Foley Square, New York, New York, on June 23, 1975 at 10:00 o'clock in the forenoon or as soon thereafter as counsel can be heard, pursuant to Rule 9(m) of the General Rules for the Southern District of New York, for reargument of plaintiffs' motion pursuant to Rule 23 of the Federal Rules of Civil Procedures and for such other and further relief as may be just.

Dated: New York, New York
June 10, 1975.

WEISMAN, CELLER, SPETT, MODLIN & WERTHEIMER
By MILTON C. WEISMAN
A Member of the Firm
Attorneys for Defendant Oppenheimer Fund, Inc.
425 Park Avenue
New York, New York 10022

Notice of Motion for Reargument of Defendant Oppenheimer Fund, Inc., dated June 10, 1975

To:

WOLF POPPER ROSS WOLF & JONES
Attorneys for Plaintiffs
845 Third Avenue
New York, New York 10022

GUGGENHEIMER & UNTERMYER
Attorneys for Oppenheimer Defendants
80 Pine Street
New York, New York 10005

THACHER, PROFFITT & WOOD
Attorneys for Defendants
Edmund T. Delaney and Emanuel Celler
40 Wall Street
New York, New York 10005

Notice of Motion for Reargument of Defendants Edmund T. Delaney and Emanuel Celler dated June 10, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law and upon the papers heretofore filed with respect to the class action motion, defendants Edmund T. Delaney and Emanuel Celler (the "Unaffiliated Defendants"), by their attorneys, Thacher, Proffitt & Wood, will move this Court, at the Chambers of Judge Thomas P. Griesa, in Room 607-H, United States Courthouse, Foley Square, New York, N.Y. on the 23rd day of June, 1975, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, pursuant to Rule 9(m) of the General Rules of the Southern District of New York, to reargue the class action motion, and for such other and further relief as may be just.

Dated: New York, New York
June 10, 1975

THACHER, PROFFITT & WOOD
By DWIGHT B. DEMEREITT, JR.
Attorneys for Unaffiliated Defendant
40 Wall Street
New York, New York 10005
(212) 483-5800

Notice of Motion for Reargument of Defendants Edmund T. Delaney and Emanuel Celler dated June 10, 1975

To:

WOLF POPPER ROSS WOLF & JONES
Attorneys for Plaintiffs
845 Third Avenue
New York, New York 10022

WEISMAN, CELLER, SPETT, MODLIN & WERTHEIMER
Attorneys for Defendant Oppenheimer Fund, Inc.
425 Park Avenue
New York, New York 10022

GUGGENHEIMER & UNTERMYER
Attorneys for Oppenheimer Defendants
80 Pine Street
New York, New York 10005

Plaintiffs' Notice of Motion for Reargument dated June 10, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

PLEASE TAKE NOTICE, that upon the accompanying Memorandum, and upon the plaintiffs' motion for a class action determination pursuant to Rule 23(c) of the Federal Rules of Civil Procedure, a[illegible] all of the affidavits, memoranda and other papers submitted in connection therewith, and upon the opinion of the Court filed May 15, 1975 determining that the above consolidated actions may be maintained as a class action and upon all prior proceedings herein, the undersigned will move this Court in Court Room 607-H of the United States Court House, Foley Square, New York, New York, on the 23rd day of June, 1975, at 10:00 A.M. or as soon thereafter as counsel can be heard for an Order permitting reargument with respect to the question of the method of giving notice to the members of the class who are still shareholders of Oppenheimer Fund (the "Fund"), and upon reargument, directing that notice be sent to said members of the class by enclosing an appropriate notice in a regular mailing by the Fund to said class members (but not to other shareholders of the Fund who are not members of the class) with plaintiffs to pay for the additional expense involved in mailing the notice to said class mem-

Plaintiffs' Notice of Motion for Reargument dated June 10, 1975

bers as part of the regular mailing, and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
June 10, 1975

Yours, etc.

WOLF POPPER ROSS WOLF & JONES
By DONALD N. RUBY
A Member of the Firm
General Counsel for Plaintiffs
845 Third Avenue
New York, New York 10022
(212) PL 9-4600

To:

GUGGENHEIMER & UNTERMYER
Attorneys for Oppenheimer Management Corporation, Oppenheimer & Company, Leon Levy and Jack Nash
80 Pine Street
New York, New York 10005

WEISMAN CELLER SPETT MODLIN & WERTHEIM
Attorneys for Oppenheimer Fund, Inc.
425 Park Avenue
New York, New York 10022

Notice of Appeal of Defendants Oppenheimer Management Corp., et al., dated October 27, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Notice is hereby given that defendants Oppenheimer Management Corporation, Oppenheimer & Co., Leon Levy and Jack Nash (the "Oppenheimer Defendants") hereby appeal to the United States Court of Appeals for the Second Circuit, from the order of Judge Thomas J. Griesa, dated September 30, 1975, and entered in this action on October 1, 1975, insofar as it denied the Oppenheimer Defendants' motion for reargument of the decision of the Court filed May 15, 1975.

Dated: New York, N.Y.
October 27, 1975.

GUGGENHEIMER & UNTERMYER
By: /s/ LEON H. TYKULSKER
Leon H. Tykulsker
Attorneys for Defendants Oppenheimer Management Corporation, Oppenheimer & Co., Leon Levy and Jack Nash
80 Pine Street
New York, N.Y. 10005
Tel. (212) 344-2040

Notice of Appeal of Defendants Edmund T. Delaney and Emanuel Celler dated October 27, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Notice is hereby given that defendants Edmund T. Delaney and Emanuel Celler (the "Unaffiliated Defendants") hereby appeal to the United States Court of Appeals for the Second Circuit from the order of Honorable Thomas P. Griesa, U.S.D.J., dated September 30, 1975, denying their motion for reargument of his opinion dated May 15, 1975 granting plaintiffs' class action motion, entered in this action on the 1st day of October, 1975.

Dated: October 27, 1975.

THACHER, PROFFITT & WOOD
By /s/ ROBERT S. STITT
Attorneys for Defendants Edmund T. Delaney and Emanuel Celler (the "Unaffiliated Defendants")
40 Wall Street
New York, New York 10005
(212) 483-5800

To:

WOLF POPPER ROSS WOLF & JONES
Attorneys for Plaintiffs
845 Third Avenue
New York, New York 10022

Notice of Appeal of Defendant Oppenheimer Fund, Inc. dated October 30, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

NOTICE is hereby given that defendant OPPENHEIMER FUND, INC., hereby appeals to the United States Court of Appeals for the Second Circuit from the order of Judge Thomas P. Griesa entered in this action on the 1st day of October, 1975.

Dated: New York, New York
October 30, 1975

WEISMAN, CELLER, SPETT, MODLIN & WERTHEIMER
By /s/ MILTON C. WEISMAN
A Member of the Firm
Attorneys for Defendant Oppenheimer Fund, Inc.
425 Park Avenue
New York, New York 10022
Tel. No.: (212) 371-5400

Notice of Appeal of Defendant Oppenheimer Fund, Inc.
dated October 30, 1975

To:

WOLF POPPER ROSS WOLF & JONES
Attorneys for Plaintiffs
845 Third Avenue
New York, New York 10022

GUGGENHEIMER & UNTERMYER
Attorneys for Oppenheimer Defendants
80 Pine Street
New York, New York 10002

THACHER PROFFITT & WOOD
Attorneys for Defendants
Edmund T. Delaney and Emanuel Celler
40 Wall Street
New York, New York 10005

Deposition of Investment Company Services Corporation (by John C. J. Wouters and Frank Sebastian) and Additional Information Supplementing the Same dated July 18, 1973 and October 10, 1973, Respectively*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

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(1)

Depositions of INVESTMENT COMPANY SERVICES CORPORATION (by John C. J. Wouters and Frank Sebastian) held pursuant to the Federal Rules of Civil Procedure, before Thomas P. Foley, C.S.R., at the office of Investment Company Services Corporation, 99 High Street, Boston, Massachusetts, on July 18, 1973, commencing at 11:00 a.m.

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JOHN C. J. WOUTERS

being called as a witness, having been first duly sworn by the Notary Public, Lawrence S. Geisler, testified as follows:

Direct Examination by Mr. Ruby:

Q. How do you spell your name, sir? A. (Spelling) Wouters.

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* The deposition of the Fund's transfer agent, Investment Company Services Corporation, by Messrs. Wouters and Sebastian, its Comptroller and Director of Systems and Programming, respectively, was taken by plaintiffs' counsel on July 18, 1973; additional information, which was requested by plaintiffs' counsel during the course of the deposition, was forwarded by the transfer agent on October 10, 1973.

Deposition of Investment Company Services Corporation (by John C. J. Wouters and Frank Sebastian) and Additional Information Supplementing the Same dated July 18, 1973 and October 10, 1973, Respectively

Q. Mr. Wouters, could you tell me by whom you are employed? A. By ICSC, Investment Companies Service Corporation.

Q. And what is your position with that company? A. I am the comptroller.

Q. A what? A. Comptroller.

Q. And how long have you held that position? A. About three years, slightly over three years.

Q. And what did you do before that? A. Before that I work for IT&T.

Q. What is that? A. International Telephone and Telegraph Corporation.

Q. And what did you do there? A. I designed a system for their mutual funds.

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Q. A system? A. A system, a shareholder accounting system.

Q. Does that involve the use of computers? A. Yes, it did.

Q. Are you trained in the use of computers? A. I have a certificate from New York University in data processing which involved training in programming and related subjects.

Q. And as comptroller of ICSC, what are your responsibilities? A. My responsibilities are the control of the data processing and in general within ICSC, for the clients of ICSC I make sure, for instance, that the shareholder accounting figures are in agreement with the funds' figures, that the bank accounts are kept up to date, reconciled. In other words, I take care of the financial obligations more or less.

Deposition of Investment Company Services Corporation (by John C. J. Wouters and Frank Sebastian) and Additional Information Supplementing the Same dated July 18, 1973 and October 10, 1973, Respectively

Q. What is ICSC? What generally is their business? A. ICSC is a servicing company mainly for mutual funds. We service the shareholder updating for the mutual funds.

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Q. And you say you do it for three Oppenheimer Funds. What are they? A. Oppenheimer Fund, Oppenheimer TIME Fund and Oppenheimer AIM Fund.

Q. To your knowledge, what is the Oppenheimer Systematic Capital Accumulation Program and what relationship, if any, does your company have with that? A. All right. Oppenheimer Systematic Accumulation Programs is a separate entity, to the best of my knowledge, that is investing in shares of (6) Oppenheimer Fund. As such, we have a control account within the Oppenheimer Fund records reflecting all the shares outstanding for the Oppenheimer Systematic Accumulation Program shareholders or plan holders, I should say.

Q. Would it be fair to say that people who purchase some interest in—I will call this OSCAP as an abbreviation—that they purchase an interest in some kind of plan which represents an undivided interest in Oppenheimer Fund shares? Is that your understanding? A. That would be my understanding, yes.

Q. And when these plans or accounts of a particular individual are liquidated, then the custodian of OSCAP sells the fund shares to the funds and the proceeds are then credited to the OSCAP holder, the plan holder? A. That is correct.

Q. And you keep various records for various OSCAP plan holders? A. That is correct.

Q. And the same way that you would keep records of the Oppenheimer Fund shareholders?

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A. That is correct, in the same general way, not exactly the same way. The technical record keeping is different for the Oppenheimer Fund as opposed to the OSCAP plans.

Q. Does ICSC send out various reports for Oppenheimer Funds? A. Yes.

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Q. Do you have people who work with you and assist you as the comptroller here? A. Yes.

Q. Could you describe essentially the type of personnel who assist you in what you do? A. There is one assistant comptroller and three main divisions of the comptroller's division, three departments within the division. One department is mainly concerned with share reconciliation.

Q. What does that mean? A. That means that that particular department keeps track of share updating, share processing, share accounting, anything related to fund shares as being debit or credit to shareholders' accounts. There is another department that is called Cash Reconciliation Department, and that department (9) keeps track of the bank accounts that are being controlled by ICSC. The department receives the bank statements, pay checks, makes the reconciliations on a monthly basis, reports all the department's discrepancies, et cetera. There is a third department that does all kinds of individual jobs; for instance,

the warehouse, the archives are under my supervision—forms ordering, forms control, abandoned property, research jobs, special research jobs that are kind of complicated, cost accounting, things like that.

Q. In connection with the various functions that you described, is much of this done through the use of computers? A. Yes.

Q. I would like you first to describe for me the procedure that you go through if you are sending out a report, like an annual report, like a letter from the president to the shareholders of Oppenheimer Fund, including the plan holders of OSCAP. A. Well, I could give you a general description of (10) the procedures followed, not exactly in detail, because I am not in charge of operations. So, you know, I may miss a couple of fine points mainly, but basically we have a file of magnetic tape for Oppenheimer Fund shareholders, we have a file of magnetic tape for OSCAP plan holders. This file contains the account numbers, balances, pertinent information as to the type of plans, number of payments made, all kinds of coding indicating foreign accounts, domestic accounts, estate coding, beneficiary coding, all kinds of information pertaining to the type of account that we are dealing with. We have a separate file with names and addresses pertaining to the shareholders. The two files are cross-referenced by way of account numbers.

Q. By way of account numbers? A. Account numbers. We send out the mailing, the procedure would be to access the names and addresses from a name and address file, merge them with the current open accounts on the share-

holder's file, create a print tape, which is a magnetic tape again which is being used by (11) the computer to print out address labels or address insert slips which then would be inserted in a window envelope together with other material that would be mailed out in that particular mailing.

Q. Now let me go back for a moment to the magnetic tape that has certain pertinent information. I take it that this tape is constantly being changed? A. Yes, it is.

Q. As someone purchases Oppenheimer Fund shares, his account number and pertinent information are added? A. Yes.

Q. They are added to that, and at the same time there would be an addition to the other tape which contains the names and addresses with the cross index of the account number, right? A. That's correct.

Q. Would these tapes indicate when a purchase was made? Would it indicate the date that a purchase was made? A. Yes, it would.

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Q. Would it indicate the number of shares purchased on that date? A. Yes, it would.

Q. Now let's assume that a particular shareholder buys a certain number of shares on one date and then a couple of weeks later he buys some more shares. Would this tape reflect each of these transactions? A. To a certain maximum number of transactions.

Q. Well, what is that? A. Which is 16 transactions.

Q. What happens after that? A. After that, as soon as the 16th transaction is recorded, we transfer that information automatically over to what we call purged full-

page tape. The classification "full-page" refers to the statement that is being sent which is now full-page because it has transactions on it. So through computer programming we transfer the 16 transactions on this purged tape and we leave on the current tape a notation "balance forward" with the balance, which is the end balance of the last 16 transactions.

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Q. So it refers to this separately? A. So we have the history tape, so to speak.

Q. When someone sells some shares, I take it, or redeems some shares, that would be also reflected in the magnetic tape, right? A. Yes.

Q. Now, suppose he sells all of his shares; is that handled differently? Does his name continue to be carried in the magnetic tape or is he eliminated or what happens? A. Well, first of all, the account goes to a zero balance.

Q. Right. A. He is not automatically eliminated from the tape, but here we have to make a distinction between the OSCAP and the voluntary fund shareholders because the procedure has been different for the two files. The OSCAP shareholders are still on the current tapes as far as the names and addresses are concerned.

Q. On OSCAP? A. The OSCAP shareholders—we still have the names and addresses of the OSCAP shareholders that in (14) the last number of years redeemed all their shares.

Q. Going how far back, for example? A. I wouldn't know.

Q. For example, would you have them going back to 1968? A. I would say yes.

Q. Now what about, insofar as they are concerned, whether they are redeemed, or do not redeem? They would still be on the tape? A. On the tape, right.

Q. What about the Oppenheimer Fund shareholders? A. Oppenheimer Fund we did take off all the closed accounts, off the magnetic tape as of the end of 1970, and we did it again as of the end of 1971.

Q. What does that mean, taking them off the tape? A. That means that every closed account is removed on that tape, that it doesn't exist there any more.

Q. It exists someplace? A. It exists still on what we call again a purged tape.

Q. So there is another tape?

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A. Another tape.

Q. That still records the names, the account numbers, the addresses? A. The addresses.

Q. Of people who are no longer Oppenheimer Fund shareholders? A. That is correct.

Q. Approximately what is the present number of shareholders of Oppenheimer Fund?

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Mr. Ruby: Let's go back on the record. Mr. Galli, who is present in the room, indicated that he believes that approximately there are 175,000* combined shareholders of both the fund and OSCAP of which

about 90,000* are OSCAP and about 85,000* are Oppenheimer Fund, and I understand that more precise information can and will be obtained on this matter.

[See additional information, *infra.*]

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Q. Now let's say we were talking about a period from March 1968 to April 1970, we will talk about this a little more precisely, but I would like to ask you to describe for me the procedure that you would go through to determine the identity of people who purchased during that period? A. Okay. The procedure would be different for OSCAP as opposed to the voluntary fund because of the nature of the records that we keep for the two.

Q. All right, describe both of them then. A. Okay. For the voluntary fund, the most accurate, the best way of obtaining that information, would be to keypunch from the daily journals for that particular period of time the account numbers of all the accounts that made a purchase in that period.

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A. All right. On every day we have, every working day we have an update of shares bought, sold, transferred to and from shareholders of the funds. The result of that

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* Number of OSCAP plan holders 85,176
Number of Fund shareholders 86,019
171,195

update is, among other things, a record which we call a daily journal containing all these transactions with totals.

Q. Now, the daily journal. What is that? Is that a collection of pieces of paper, is it a tape? What physically is it? A. It is a collection of pieces of paper that are produced by the computer that reflects all liquidations and other transactions and purchases on a given date for a given fund.

Q. How far back does that go? A. Well, we have checked and we have those available for the period of time that you just mentioned, March 29 to April 1970.

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Q. Now what did you say should be done with that? You said they keypunch it? A. Yes.

Q. What does that mean? A. Yes. For these—we can give these papers to a keypunch operator; she can keypunch an IBM card, and in that IBM card we can keypunch then the account number.

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Q. In other words, you would have one IBM card for each purchase made during that period. When you say "each purchase"— A. Yes.

Q. When you say "each purchase", do you mean that if a particular person made five purchases that there would be five IBM cards? A. Yes.

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Q. And, of course, some of them might be duplicative

in the sense that the same person is making more than one purchase? A. That is correct, yes.

Q. So you would have a certain number of IBM cards that would reflect the purchases during this period. All right, now what would you do with those IBM cards? A. We would then take our current master file of the Oppenheimer Fund shareholders and we would then apply, after sorting, eliminating duplicates and selecting one record out of these cards, we would then apply that tape against the—or that number of cards against that particular current tape to select the shareholders names and addresses from the current tape for which we had a purchase.

Q. You said that you would take these cards and you would sort them. By "sort" what do you mean by that? A. We would sort the cards in account number order.

Q. In what?

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A. In account number order.

Q. Why would you do that? A. Well, it would be easier to handle them that way because our tape is in account number order any subsequent matching jobs or collating jobs or eliminating jobs would be easier if we put it in account number order.

Q. Is that chronological? A. Non-chronological.

Q. When you say "put them in order," what do you mean? A. Account number order.

Q. What does "account number order" mean? A. Well, account number one is lower than account number ten.

Q. In other words, going up from the lower numbers to the higher numbers? That is what you mean by sorting? A. Right. That's what I mean.

Q. Now, on those cards would that be something which is physically done? Would somebody be taking those cards and putting them in that order? How would that be done? (23)

A. No. We would do that by machine.

Q. By machine? A. Yes.

Q. So the machine would put those cards in that order? A. Yes.

Q. Going from the lower numbers to the higher numbers? A. Yes.

Q. Is there anything else that is done with those cards before they are then compared with the master file tape? A. Well, we would then, if you want to go step by step through the thing—we could take the cards and put them on a magnetic tape.

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Q. All right, then what would you do? A. Then we would just, what we call, tape, sort, or just sort methods selected by computer programming, by application of computer programming select only one single record for each account number that we have, eliminating duplicates, in other words.

Q. All right. So where there were more than one purchased by a person, you would eliminate them? A. Would eliminate them.

Q. How would that be eliminated then, by machine? A. By machine.

Q. All right, then what would you do? A. That would give us one record for each shareholder involved in these

purchases and we would still have that in the account number order.

Q. Right. A. So, therefore, we can then apply that particular record, that particular magnetic tape, against our current tape and match the account numbers on one tape against the other tape and, therefore, select then the names and addresses of (25) every account number that matches on—

Q. All right, now when you do this physically, you match one tape against the other, what would be the result of this? Is there some sort of printout? A. We would get a printout if we program it that way to get all the names and addresses of all the account numbers that are on file, we would call tape number one, which is the card tape, and also on the card tape. Now, we also find that some account numbers are on tape one but not on the current tape.

Q. And that is because they are no longer— A. They are no longer shareholders.

Q. No longer shareholders? A. Right.

Q. Is that true also of the fund shareholders which are in OSCAP? A. It is true that that particular situation exists, but on OSCAP we would not follow the same method.

Q. So what you have been describing so far deals with the fund shareholders? A. With the fund shareholders only.

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Q. All right, so that you would then, as a result of this, get a printout and you could get a printout which had the names and addresses? A. Names and addresses of the current shareholders.

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Q. I would like to go back over this again with this in mind: You mentioned a few things being done and now I would like you to tell me who would be doing these things, whether you have a reasonable estimate of the time that would be involved in doing it, what the particular person who is doing it, what the company pays for that person's time and so forth, so that I can get an understanding of what is involved in terms of the cost of going through the procedure that you just described. Okay? A. Okay.

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By Mr. Ruby:

Q. So you started off by talking about having somebody, a keypunch operator, taking the purchase list from the daily journal and making cards. Now what does that involve in terms of time and expense? A. We estimate the keypunching of that particular job which I described at about $6,000.

Q. Is that based upon an estimate of the number of transactions? A. Yes, it's very hard to estimate fairly accurate the number of transactions.

Q. Tell me how you arrived at that figure of $6,000. A. All right. We took the possibility that we would have about 300,000 cards, that we would be able to keypunch about 300 an hour, and that the cost of that would be $6 an hour, and that's how we got our estimate of $6,000.

Q. You say that you thought you could do 300 per hour. What is that estimated upon? A. Based on past experience within the company.

Q. That a keypunch operator could do 300 per hour?

A. Using the records that we provide, it all depends on what kind of records you provide a (28) keypunch operator; if there is a handwritten, manually written record, the keypunch operator would not be able to keypunch it as fast as from a machine-typed record.

Q. What are we talking about here? A. You are talking about machine-produced records.

Q. Machine-produced records? A. Yes.

Q. So these would be faster? A. But we are also talking about copies, not really copies—second or third, copies of the listing.

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Q. You say that is a third copy. What is the significance of there being a third copy? A. Well, it is a carbon copy so it is not as easy to read as the original one, so that may slow the keypunch operator down a little bit. That is what I am trying to say.

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Q. In the past when you say you have had some experience in doing this, in what context would somebody be doing this in the past? A. Well, we have used similar listings in the past to do certain research jobs. For instance, where we wanted to arrive at some statistical information to reconstruct activity within a certain period of time, we have used similar listings. For other firms' funds, for not exactly the same type of job that we are talking (32) about here, but the similarity is there, so we feel that on the basis of our experience with that type of work, we

feel that a keypunch operator could do possibly about 300 cards an hour.

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Q. Let's go now to the question about the amount per hour. You talked about $6 per hour. What is that figure based upon? A. It is based upon our own cost studies, as to what the cost would be, as to what it would cost to have keypunch work done and it's comparable, (35) I would say, to outside charges by outside keypunch companies. • • •

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Q. Well, what factors go into that study? What do you consider in arriving at the $6 per hour? A. Salaries, fringe benefits and overhead, the rental (36) of the keypunch machine, for instance.

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Q. I would also like you to give me the range of salaries that you do pay these people who would be performing this.

[See additional information, *infra*.]

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Q. What about the rental of these keypunch machines? Are they rented? A. Yes.

Q. And what is the rental of a keypunch machine? A. Offhand I can't tell you that either, we have so many machines, we have listings available on these machines. I mean, all this information is available, but I don't have it off the top of my head.

Q. All right, I would appreciate it if you would also give me that. [See additional information, *infra*.] Now, you mentioned a time and cost study expense. Is this something that was embodied in some kind of memorandum? A. No, but our internal records are available in this company that would reflect certain cost studies that were made by my department to arrive (39) at the costs that are incurred within the company or within certain departments.

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Q. • • • All right, I would appreciate it if you could make a copy of that which reflects the computations that you have just described, which led to your opinion that (40) the cost to the company would be approximately $6 per hour. • • •

[See additional information, *infra*.]

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Q. You then apparently • • • (42) • • • also made an estimate of the number of cards. In other words, there were, I guess, three things that went into this equation: one was the estimate of the number of cards that could be produced per hour, one was the cost per hour and one was an estimated total number of cards. Now let's focus for a minute on the last item.

What, if anything, did you base that estimate on? A. The number of cards?

Q. Yes, total number of cards. A. Entirely upon word of mouth from our vice-president in charge of operations who feels that the number of transactions in that particular period of time would be around 300,000.

Q. And what period are you talking about now? A. About March 28, 1968 to April 24, 1970.

Q. He said there would be 300,000? A. That's his estimate.

Q. His estimate. And do you know what he based that on? A. I think he just based that on his feelings. I (43) don't think he has any records really available at this point, or I don't think anybody compiled any records to point out what the approximate number of transactions would be.

Q. I mean would you have any way of knowing where there are 200,000 as opposed to 300,000, or is there any basis, I mean? A. Well, again, we could do a study on it. We could take those daily journals that I was talking about and take a handful in the beginning of the period, the middle of the period, end of the period, and see how many transactions we have on there and then multiply that by the number of days involved and we could have a better estimate or a closer figure than we have right now. There's a lot of possibilities.

Q. Perhaps you might do that, if you can, to just try to get a slightly better estimate.

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Q. • • • I would like you to make an estimate for both the period from March 28, 1968 to April 25, 1969, you know, maybe taking three samplings or something like that—

A. Yes.

Q. —and then also make the same estimate for the period April 25, 1969 to April 24, 1970.

[See additional information, *infra*.]

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Q. All right, now let's continue with your description of the procedure and the courses involved, now that we have covered the keypunching of this. Would you continue as to what is involved in terms of carrying this forward? A. Well, at the point where we have the keypunching all done, we can't really do anything with this work unless we create several programs, computer programs to handle this keypunch information, to transfer it on tape, to match tapes and to come up with the results that we are trying to come up with. So we made an estimate of the number of programs that we would have to create, we came up with eight programs that would have to be prepared, and our estimate for preparing that type of work would be about $7,500.

Q. Now, would you tell me what programs you are talking about? A. We are talking about what is generally known as computer programs.

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Q. Are there separate programs for both? A. Yes.

Q. Both separate? A. Yes.

Q. Let's take the fund ones for a moment. How many programs would be necessary to carry this forward as you have described it, dealing just for a moment with the fund? A. We have four programs that we would have to design to do the fund's work.

Q. And what do they consist of? A. It would be a program to capture the cards to tape, in other words, to transfer the information out of this card on to a magnetic tape.

Q. From the keypunch to a magnetic tape? A. Right.

Q. Right? A. There would be a program then to sort, eliminate and select one record out of that magnetic tape. (47)

Q. Yes? A. There would be a program then to match this particular end result of that tape to the current file of the fund shareholders.

Q. Yes? A. And there would be a program to match the unmatched accounts to our 1970 file for the voluntary shareholders in order to obtain all the addresses on the shareholders that are no longer shareholders at this point.

Q. In other words, three of them would deal with the ones who are presently shareholders, the fourth program would deal only with those who are no longer shareholders? A. That is correct.

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Q. • • • [A]s a result of these computer programs you would get, I take it, this carrythrough to the final printout, or is there anything else that had to be done? A. Well, no, because there's also some printing runs that will have to be done for which we think we have existing programming available, so we didn't have to make up a program, so these programs that I just mentioned, don't do the whole job.

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A. We have already some other programs available that we can apply to the rest of the job.

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Q. So this would carry us through then to the end of what you have described, so far dealing with the Oppenheimer Fund? A. Well, there is another point.

Q. As far as you know? A. Yes, there is another point on some other things that come into the work here. We need some project leader to coordinate all the efforts, to (50) schedule the work, to talk to Frank Sebastian and the EDP department to have these things done on time, so there is some supervisory cost involved, which we estimate at about $1,250, which would be a detail that I have around someplace, 50 hours at $25.

Q. On those 50 hours whom are you talking about there? A. Well, I am probably talking about somebody out of my division that we would assign the job of handling the whole project.

Q. Somebody who normally does what? A. Somebody who normally does accounting work or auditing work.

Q. Isn't there somebody who normally supervises the keypunch people? A. Yes.

Q. And when you are using the keypunch people and when you are preparing from the keypunch cards a tape and when you are having that done used in a program which has been devised, isn't there somebody who normally has responsibility for supervising these kinds of activities? (51)

A. We have supervisors in all our departments doing their own supervisory work, but if a special project like this which would come up which requires certain work to be done, that is not normally done in our company, then we would like to have somebody in charge of it so that we know with some certainty that the work is done properly.

Q. Well, I am trying to understand what, you know, additional time would be involved and I am a little confused as to the estimate that you have made about 50 hours. Maybe you can tell me what? A. Okay.

Q. Because it doesn't seem to me, from what we have described here, that we are talking about anything that would require any person beyond what he normally does in supervising people to spend 50 hours? A. Okay. I can take you through it and see if you agree with it. Somebody has to first design the system that we are going to follow. Somebody has to determine—

Q. What do you mean by "design the system"?

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A. Well, somebody has to determine as to how exactly to get the information that we want to get.

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A. Also, once that system or that procedure has been set up, somebody will have to follow this procedure and make sure that all the various departments involved in processing this particular work are doing it exactly the way we want them to do it, that the results are coming out; that, for instance, we don't forget a whole week of journals. * * *

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Q. * * * Now, once that is done, what is it that this other person, the supervisor, is supposed to be doing at this time? A. Okay. The supervisor then has to coordinate the efforts between the keypunch department and the EDP.

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Q. What is the EDP? A. Electronic Data Processing Department.

Q. What does that mean, "coordinate"? What are you talking about? A. Coordinate the efforts. He's got to find the running time to run all these cards on the machine, get a listing to make sure that we have the same totals of the same total number of purchases that we have keypunched as we had available in the journal so we didn't miss any.

Q. What does that mean? What is he physically doing? When you say "coordinating", is he telling somebody to take these cards and to use them in making a tape? A. He will tell the supervisor in the keypunch department what exactly he wants done in the way of keypunching. He will tell the supervisor what kind of material in what form he wants out of keypunching.

Q. Yes. A. He will tell EDP what time to expect this particular work into the EDP department so that they can then schedule time available for running (55) these listings and running these totals. Then he has to coordinate and give instructions to his personnel again to check these totals back against the original documents.

Q. Yes, but aren't you talking though about a relatively short amount of time in terms of giving instructions? A. Well, I think it is not just giving instructions. It is also being on top of the work and checking it out and making sure that the work is being done on time, within the allotted time and properly.

Q. Yes, but while the work is going on, while the keypunch operators are working and after instructions have been given which presumably have been given in maybe a half hour or what have you, what is this person going

to be doing? He is not going to be watching the people physically keypunching? A. No, he may not be watching.

Q. I mean isn't he going to be working on things he would be normally working on? A. Well, he may be all in all, but I think there's (56) already a lot of work involved in just getting the records out of our warehouse in the form ready for keypunching. Somebody has to go through these records and determine which listing belongs to the work we want to do and which not. Now I am saying you can go by the dates, you can go by the transaction codes, but it may not all be that simple. Suppose a little piece is torn off the side; you have no date; what are we going to do to establish what kind of date that should be there? All these types of decisions may come up and this supervisor will have to do something with it.

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A. Right. So far we have talked mainly about the voluntary funds. Keypunch, for instance, was all voluntary funds.

Now, once you have this keypunch, once you have this programming done, then you have to take a lot of machine time and operator time to get the results that you are trying to get. For instance, I haven't mentioned the paper cost or the cards, which is one $1.20 per thousand.

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A. $1.20 per thousand. I have not yet mentioned the fact that we would run approximately 15 hours at $150 com-

puter time.

Q. The computer would run how long? A. 15 hours.

Q. 15 hours. A. At $150 an hour.

Q. And what is the estimate of 15 hours based upon? A. Again based on how much time it takes for us now to run through all the files that we currently carry on Oppenheimer Funds. In other words, we know that if we run a reel of tape on a machine and you take off certain information, it takes you about 15 minutes a reel.

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(61) • • •

Q. Fifteen minutes a reel? A. A reel. We have looked at this particular work and estimated the number of reels that possibly could be involved, again based on an estimate of the number of cards, which again is an estimate of the number of transactions.

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(62)

Q. Fifteen hours total of computer time, and that is based upon the estimated number of cards which you gave before as 300,000, relating to the Oppenheimer Fund; is that correct? A. That is correct.

Q. And the 15 hours—is that again limited to Oppenheimer Funds? A. Yes.

Q. And this would be running the computer for what, to cover everything that you have described before? A. To capture to tape the cards that I described before, to sort these cards from tape at that point, to eliminate duplicate transactions from the same shareholder and to select one

record per count and to arrive at a new tape which would give us all the transactions for all those shareholders that are involved for that particular period of time, so that at that point we have a tape with all the shareholders we want to have on there. It would also involve about 18 hours' operator time at $15 an hour. Now, the operator time is larger than the (63) computer time because this operator has to take tapes off, take them out of the vault, bring them back to the vault, put tapes on the machines, take tapes out of the machines. So while the computer isn't running, this operator is doing work for the particular job.

Q. The estimate or your reference to $15 [sic] an hour for the running of the computer, what is that based on? A. Again based on our own cost calculations that we have available within our own company.

Q. Do you have some document like the one that you have described? A. The same documents as we have described before.

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(64) • • •

Q. Now, before we go over to complete the OSCAP aspect of it, is there anything else? A. No, there is more. We also feel that we have a sorting job alone on the cards before we can get them on tape, which would be about two hours, and just the cards we would use probably three machines for that, which brings it up to 6 hours. So we need another 6 hours of computer time for that particular job for $150 and nine and a half hours' operator time. So that the total processing time for all this, all this work that came out of this keypunching job, would be about

$4,000; and with the extra cost involved that I (65) just mentioned here, altogether we estimated on about $6,000 for the whole voluntary preparation.

Q. Well, now let's go back for a moment. I thought you testified before that in connection with the machine time for the computer, the 15 hours, that that would cover the sorting of the cards which would be done by machine? A. To capture to tape, the sorting, yes, but before we want to sort the cards, presort the cards, before we put them on tape, in other words.

Q. Isn't that done by machine? A. That is also done by machine, yes.

Q. Isn't that included in the 15 hours? A. Not the 15 hours. The 15 hours is the sorting after they are on tape.

Q. The sorting after? A. Yes.

Q. What sorting? A. There is a separate sort which you can do easier with less time before you put the cards on tape than when you do after the cards are on tape. In other words, sorting of cards is being done in (66) a different method than the sorting information that's already on tape, and we feel that with that number of cards that we would be better off to just put them in numerical order on a card sorter before they go on tape than doing it on a tape sorter. It would probably cost more money than if you did it on tape.

Q. On tape, but the computer time of 15 hours would not include what you would say is necessary in terms of sorting the cards? A. Before the capture of the cards, yes.

Q. And that you estimate to be two hours? A. Well, two hours with three machines, six hours in total, $150, that would be $900, and—

Q. Is there any basis for making that estimate? A. Again, the $150 is a flat rate.

Q. What do you mean by a flat rate? A. This is what we applied to this particular job. This is an average of what computer components cost.

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(78) • • •

Q. • • • Now is there anything else on the processing and the cost? A. For the voluntaries?

Q. Yes. A. No, that would be it except, again, we have talked only about the preparation of certain tapes or listings or inserts that we are coming up with. The actual mailing has not been involved so far and we have no estimates on that, except we can tell you what we would charge for an envelope for an inserter, but depending on how many we need, that is what the cost is going to be; we we don't know how many.

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(Luncheon recess)

JOHN C. J. WOUTERS, being recalled as a witness, having been previously duly sworn, resumed and testified further as follows:

(80)

Q. *By Mr. Ruby* Mr. Wouters, do you want to tell me the procedures that you haven't already covered which would relate to OSCAP? A. Okay. On OSCAP we follow different procedures to establish these files. We would take the current master tape of the OSCAP plan holders.

Q. The current what? A. Current master tape of the OSCAP plan holders, and this current tape still holds all the zero balance accounts. And we also have the names and addresses of zero balance accounts in OSCAP and we would then search that tape and extract out of that tape by programming all accounts opened in the period of March 28, 1968 to April 24, 1970. That would theoretically give us all the purchases that were made in that period of time.

Q. Now again are you talking about purchases, meaning all the individual purchases by each of the plan holders?
(81)

A. Individual.

Q. In other words, you would have more than one purchase perhaps for each plan holder, right? A. Yes, we would.

Q. Okay. A. To cover the dividend reinvestment which took place, which is for all practical purposes the same as a purchase, we would take a tape that is still available dated March 29, 1968, and that tape would give us the same shareholders as the ones that have received the dividend on June 21, 1968, if we eliminate out of that tape the accounts that closed in April, May, and June. Now, to extract out of the tapes the accounts that closed between April, May, and June is quite an extensive job and we would leave it up to your suggestion, whether you would want us to do that or not.

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(82) • • •

Q. Right. What does this add to the other tape, in terms the people that would be covered? A. The shareholder or the plan holder that did not make a purchase.

Q. Yes? A. But was a shareholder, let's say, at the beginning of the period covered, would have received a dividend, the dividend was reinvested.

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(83) • • •

By Mr. Ruby:

Q. Okay, now go ahead and tell me what else you would have to do in connection with the OSCAP? A. We would then merge the results of the first and the second tape to arrive at one total category that would be of shareholders that would be involved, and that would be the tape of the class of shareholders that we are looking for—as simple as that. Well, we then apply this particular tape against the current tape to get all the names and addresses as we did in voluntary. Once we have that, we have to apply a print program to print the notice.

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(84) • • •

Q. Do you know what programming you are talking about in connection with— A. Again I need four programs. I need one program to access the current tape.

Q. To do what? A. To access the current tape, to go into the current tape and extract out of that current tape the account numbers of the accounts that were opened up within the period of the report. That is program number one.

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A. Then I would have a program to take off tape those

(85) names that are included in the March 1968 tape. This is the second tape that I was talking about.

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Q. So taking the people who invest the dividends, that is a second program? A. That's right.

Q. All right, what else? A. Then there would be a print program. First there would be a program to get to the names and addresses of the current tape and merge those with the account numbers and then there would be—

Q. Wait a minute, I am sorry. Would you say that again, please? A. There would be a program to extract the names and addresses.

Q. Yes? A. Of all the shareholders involved at that point (86) from the current tape.

Q. From the current tape? You mean matching it with the— A. The current master tape.

Q. With the first and second? A. Right.

Q. And this is the third thing? A. Right, and then there would be the tape to print address slips or address labels.

Q. Is that a program that—

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A. Yes, it is. The printing of a particular document is a separate programming step. You cannot—

Q. But I mean as a result of the third, you would now have the names and addresses of all the (87) people in the class? A. Yes, you would.

Q. So all that would then remain—you mean to print those labels? That is what you are talking about? A. That is what I am talking about. Now, since there are two

different tapes involved here at two different points in time, our system in the meantime has changed, so we are talking about two different systems and—

Q. What do you mean, two different tapes? A. Well, the first, the layout, the composition of the current tape, is different from the composition of the tape that was dated in 1968, so we cannot say—

Q. The composition of the current tape consists of everybody, right? A. Yes, but also the layout of the tape, the record, length and the spaces where these particular types of information are available are different.

Q. Yes? A. So we cannot apply one program to the same tape that we have now, so all that we had in 1968 that (88) we cannot readily merge the two, so we would wind up in the final end with two tapes instead of—two print tapes instead of one merged, combined tape.

Q. Two print tapes? A. Right.

Q. Well, I am not sure I follow you when you say two print tapes. You don't mean two printouts? A. Yes, two separate tapes which would have to—which we would have to supply a separate program to get them printed out because the information on these tapes is not in the same manner recorded.

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Q. All right, now that you have that, what else is (89) left to do? A. Print the information on an address label.

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Q. Is there anything else in connection with OSCAP? A. Well, the supervisory cost that I have explained before

is also a cost that was supposed to cover the whole operation, OSCAP as well as voluntary.
(91) • • •

Q. All right, anything else on OSCAP? A. No, that's it. Well, one in time—

Q. What is that? A. The actual machine time and operating time. We haven't touched upon that.

Q. What is that? A. Well, we expect that to be for question number one, which was to determine the class of shareholders. You would have about six and a half hours' computer time at $150.

Q. How did you estimate six and a half hours there? A. The same way we estimated the cost on the voluntary. It's an estimate based on our knowledge of similar, although not exactly the same, type jobs.

Q. Similar type jobs. As I recall, the last time you were doing it on the basis of the number of cards that you thought would have to be keypunched. Now here you don't have any cards keypunched? A. We have no cards.

Q. So now isn't there a different situation here? (92) A. Yes, but we also—I also said that we estimated computer time on the number of reels that we were going to run.

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Q. The number of reels contained. What does that depend upon? A. On how much information there is available in total. If you have a lot of shareholders, you need more reels of tape to put them all on. If you have a little bit of information, you don't need that many reels.

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Q. Do you know what the current number of reels are? A. The current number of reels in the current file (93) is, if I am not mistaken, three at the moment.

(95) • • •

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Q. • • • Do you rely upon in part the amount of time that it would take to run the master tape? A. In part.

Q. How long would it take to run the master tape? A. • • • It would take about three quarters of an hour machine time.

Q. What else is there which you rely upon in coming to the estimate that it would take six and a half hours? A. The possible number of passes that we have to make on these tapes. In fact, that we have a couple of old tapes from 1968, the condition of which we don't really know exactly until we are running them. We may have problems in reading those tapes, which could take more machine hours than the whole calculation that I have at the moment.

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(96) • • •

Q. I mean you have no information, do you, to indicate that there would be such problems? A. No but there is a possibility, and we also have to create new tapes, which is again a separate pass.

Q. You have to create a new tape? A. We extract.

Q. How many tapes would it take? A. We have to extract information out of the current tape. We extract information out of the old tape, we merge and we create a new tape every time we do that.

Q. How many tapes are you talking about?

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(97) • • •

A. I might have two new reels.

Q. Depending on how large it is? (98) A. Depending on how large it is.

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Q. And then you might have something on the dividend reinvestment right? A. Yes.

Q. So those are the reels that you are talking about, the things that flow from that, right? A. That's right.

Q. And then it is a question of running those reels and that it what determines the amount of time you are going to have to run your computer? A. Well, I also have to create new tapes from information that I extract out of the old ones which I have to run again.

Q. Isn't that what we are talking about? A. Yes, I hope so.

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(99) • • •

Q. All right, you told me what your estimate is. What else in terms of costs do you estimate? A. Well, we have not talked about testing time of these programs which takes up the machine time also, you know.

Q. What do you mean by testing time? A. Well, anytime you write a program, you just don't assume that a program is written and that it works exactly the way you want it to work, like the moment you put it on the machine, so you make a test.

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Q. Is that included in the six and a half hours? A. Yes.

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(100) • • •

Q. What else? A. Operator time would be eight hours' time, slightly more than that because there are operators involved that would begin at $15 an hour.

Q. Yes. A. Now to get to the answer to question three, the number of members of the class who are presently shareholders of the firm, to get to that (101) information we estimate that we would not only need one hour running time at $150 an hour and a half operator time at $15—

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Q. Are we finished? A. At this point we are finished, except we feel that the total cost of all this machine hours and all this preparation would be around $4,000.

Q. In other words, what you are doing now is giving me a total of what you gave me before? A. It's not a final but a total.

Q. And that $4,000 includes the machine time and what? A. It also includes the printing time.

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(102) • • •

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Q. What do you mean by printing? A. The printing of the address insert, the address slip, the label.

Q. The printing? A. Yes.

Q. Is that beyond what you have already described? A. That is the final end result of all the work that we are doing.

Q. Well, is that the printout the final part of your computer program? That is the final part of your computer

program, isn't it? A. Well, yes, it is. It is described as the final end result.

Q. You printout labels? A. It is the final printout tape from which we can printout the labels. The actual printing would be included in the $4,000.

Q. Now, is there anything else about the method of determining all of this that you have not covered? A. I don't think so.

(104) • • •

A. The maximum number of inserts we can have is four. Our machines don't allow us to put more.

Q. The maximum number of inserts? A. Is four.

Q. What do you mean by inserts? A. Inserts in an envelope.

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(106) • • •

JOHN C. J. WOUTERS, being recalled as a witness, having been previously duly sworn, resumed and testified further as follows:

By Mr. Ruby:

Q. Mr. Wouters, you heard Mr. Sebastian testifying and you heard my questions to him, and he described his knowledge of what the computer does. Now, I would like you just, (107) first of all, to tell me, so I have an understanding of how things are physically done, so let's just take the simplest thing of the mailing of, let's say, a quarterly report normally, without any additions. What happens, do you know? A. See, you are asking a question about what

happens normally. I don't think there is any such thing as what happens normally. We never know what kind of extra inserts are required with a certain mailing.

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(108) • • •

A. Okay. The computer room prepares the address slips in certain batches, depending on the category of mailing, on the instructions that they have gotten, as to what type of categories, what classes of shareholders are to be segregated from others. They identify these batches. They are going to the control group within the computer operations room, which consists of a couple of people that make sure that whatever the computer room delivers is in accordance with the instructions that they got, and then it goes to the mailroom.

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(112) • • •

Q. How is it handled when, let's say, there are 175,000 envelopes that are going out and let's say that in a 100,000 envelopes there are two pieces and in 75,000 envelopes there are three pieces and, of course, the computer has indicated to you which of the envelopes the third piece should go in? How is that handled in terms of physically getting that into the envelopes? A. If that would be the only criteria, which is, you know, again a hypothetical because in practice that never happens, you would have only two separate parts or separate batches of mailing; one would be with two inserts and one would be with three inserts and there would be no differentiation as to postage or anything else. Under this hypothetical situation, you

would have only two different batches that would come out of this machine into the mailroom and the mailroom would handle the first batch first and with a second batch second or vice versa.

Q. Would I be correct in saying that the cost would be negligible in terms of handling the mailing, (113) whether it be that all the envelopes were supposed to get two inserts or half of them or supposed to get three inserts? A. Well, we charge a penny per insert.

(154) • • •

FRANK SEBASTIAN, being called as a witness, having been first duly sworn by the Notary Public, Laurence S. Geisler, testified as follows:

Direct Examination by Mr. Ruby:

Q. Mr. Sebastian, by whom are you employed? A. ICSC.

Q. And what is your position? A. Director of Systems and Programming.

Q. How long have you been with this company? A. One year.

Q. And what did you do before that? A. I have been in data processing for about 14 years. The majority of my time was spent in management positions with IBM.

Q. And what are your responsibilities with this company? A. Responsible for directing all programming and development and procuring of programming and programming systems.

Q. And are you trained in the area of computers? A. I would say I am an expert.

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Q. Are you also knowledgeable about the time involved? (157) • • •

Q. Well, let's go to the specifics of it and deal first with Oppenheimer Fund and, as I understand Mr. Wouters' testimony, the first thing that had to be done would be to transfer, in effect, the information from a certain number of keypunch cards into a tape. Is that what you would describe as a function or functional program? A. Yes.

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(158) • • •

Q. What does that involve in terms of a program? A. Just a nominal amount of time.

Q. Like what? A. Less than a day.

Q. Less than a day? Can you give me any estimate as to what the cost would be to do that? A. I wouldn't estimate the cost.

Q. Can that be done A. Yes, that can be done.

Mr. Ruby (To the reporter). All right, I would ask that you leave a blank there and that (159) the witness fill in the information as to the estimate of doing that.

[See additional information, *infra.*]

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Q. • • • [C]orrect me if I am wrong, (160) but I am trying to recall as best that I can Mr. Wouters' testimony, and I think he talked in terms of obtaining this tape and then comparing it with the master tape so that the names and addresses of these people could be obtained. A. Right.

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Q. Can you tell me then in terms of what is involved, in terms of what you would estimate to be the time or expense involved in carrying it through along those lines? A. Well, the sorting step, first of all, the problem with the sorting step would be—I wouldn't estimate the time, the amount of time required there, because there are some questions in terms of volume and the calculations that would be necessary and the configurations that would be necessary to handle the volume of data that is required, and I think there are some problems relative to the volume of data here.

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(161) • • •

Q. All right, the data that you are talking about, when you are talking about the volume of data, (162) is the account number and the information relating to a purchase on a particular date. That's the data we are talking about, are we not? A. Right, and the number of those items that you would have.

Q. All right. Now, from this you would get a tape, would you not, which would have then the account numbers in numerical order? A. Right.

Q. And you would then compare that with the master tape, with addresses of the people; is that correct? A. Yes.

Q. And would that then produce or would that then require some program to then produce the addresses of the people that we have now identified? A. Yes.

Q. And what is involved in that in terms of the development of any program? A. Well, the problem you get into with some of this data is that it exists on a second

generation (163) data file, which means that it is difficult to interpret that data, it is difficult to work with that data.

Q. I am not sure I follow you, what you mean by "second generation".

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A. It is not 360 data and most of your programmers who program, program 360.

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Q. That is a number of a machine? A. That's right, but that connotes a certain architecture, a machine architecture, a certain way data is represented, a certain way data is written. Okay, the data we are talking about is not in that mode.

Q. Well, is this much different from the data that you are dealing with? A. It is horrendously different.

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(166) • • •

Q. • • • All right, now going back to the question that I had put to you before, can you tell me in terms of the time involved all the expense involved of taking the tape which we now have to be sorted in numerical order with the numbers and then comparing it against the master tape so that you can get a printout of addresses for the people on the first tape? A. That comparison I would estimate, with the data problems involved, could be a matter of three to four weeks.

Q. Three to four weeks? A. Yes.

Q. What do you estimate to be the cost of that? A. I haven't attached a dollar cost to these.

Q. Are you talking about one or more people working fulltime for three or four weeks? A. Yes.

Q. How many people?

(167)

A. One person.

Q. One person? A. I will give you all my estimates in terms of man weeks when I say that, in man weeks.

Q. So you are talking about one person working fulltime for three or four weeks? A. Yes.

Q. Now, what do the people get paid generally of the type that you are talking about? What kind of salary does such a person get? A. The salaries probably range from $18 to, say, $28, $30 an hour.

Q. All right, I would like you to again fill in for me the amount of time and the expense of this particular program so that I have a better idea of what we are talking about in terms of the work involved. Let me go now for a moment to OSCAP. Mr. Wouters indicated that there you would not have any keypunch cards and that the information would be directly obtained from a tape and you would get the account numbers of the people who purchased during a certain period; is that correct?

(168)

A. Right.

Q. And he also talked about another tape which referred to people who reinvested dividends, and you would have to take the information off that tape and in effect, perhaps in a layman's description, you would be combining the two tapes; is that correct? A. Right.

Q. And then you would compare that against the master tape of the OSCAP plan holders so that you would get

the names and addresses of the current OSCAP shareholders; is that correct? A. Right.

Q. And then he talked about a fourth thing, which would be in effect the printing out of address slips in connection with it? A. Yes.

Q. Now can you tell me what is involved in terms of the time and expense involved in any of these programs? A. Those things would involve something I would estimate on the range of a month to do. There are a couple of problems that you have in this (169) area, that you are dealing with two tapes, that those tapes are different in format from the previous file that we were talking about and those tapes are different from each other because—well, there was a file conversion that went on in the period of time that we are talking about.

Q. Now I would like you also to fill in in the transcript in as precise a manner as you can, after you have had an opportunity to reflect upon it, the time and expense involved in each of these stages that we have just been discussing.

Mr. Ruby: And I would like the reporter to leave a space for the witness to do so.

[See additional information, *infra.*]

(171) • • •

Q. Well, understand, Mr. Sebastian, what I am trying to understand is how Mr. Wouters arrived at a figure of $7500. Now, presumably it was based upon what you told him because he has testified that he doesn't have an independent way of making that judgment himself, he relied

upon you, so it must be information that you provided to him which resulted in the $7500, and I am trying to understand from you what it is that you would have told him that would have resulted in this figure. Can you tell me anything that can give us some illumination on that? A. I can't recall any specific time estimates.

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(185) • • •

Q. The computer function then that I am asking you about is, in effect, when you are sending out a mailing, which I have stipulated in my question would be, let's say, basically a forwarding of the quarterly report to all shareholders of Oppenheimer Fund and OSCAP. What I am asking you is to tell me what additional time and expense might be involved in writing into this computer program a direction that the (186) people who have been identified by this program we have just been discussing, that is to those people an additional piece of paper is going to go in their mailing?

[See additional information, *infra.*]

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Information needed
on Deposition J. Wouters
Oppenheimer Case*

Page 16

Number of Shareholders OSCAP	85,176 per 8/31/73
Number of Shareholders Oppenheimer Fund	86,019 per 8/31/73

Page 37

Salary Ranges:
Salary Range Keypunch Operator

	Minimum	*Midpoint*	*Maximum*
Key Punch Operator	102	112	122
Senior Key Punch Op.	114	127	140
Lead Key Punch Op.	120	135	150
Key Punch Super	144	164	184
Key Input Controller	136	154	172

Rates do not include 15% premium for late shift work.

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Rental Cost of Keypunch Machines

Card Data recorder Model 129—$160.00 per month

* This additional information is keyed to the page of the transcript of the deposition of Investment Company Services Corporation at which plaintiffs' counsel requested such supplementary information.

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Attached is a clerical cost computation for the various departments within ICSC. Department 64-04, which is the Keypunch department, is listed at a cost per hour of $6.81 for all types of keypunching. This amounts to a cost figure and does not include profit.

Due to the relatively uncomplicated keypunching involved in this case, the cost for this specific job has been set at $6.00.

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Pages 43-49

There are 269 days in the period 3/28-68 to 4/25-69. We counted the purchases for 3/28 to 4/1-68, the purchase for 10/21 to 10/24-68 and 4/23 to 4/25-68. The average number of purchases per day was 248, which number multiplied by 269 would give an estimate of 66,712 transactions between 3/28-68 and 4/25-69.

There are 248 days in the period 4/25-69 to 4/24-70. We counted the purchases for 4/25 to 4/29-69, the purchases for 10/6 to 10/8-69 and 4/22 to 4/24-70. The average number of purchases per day was 332 which number multiplied by 248 would give an estimate of 82,336 transactions between 4/25-69 and 4/24-70.

On the basis of the above mentioned tests the total number of cards could be estimated at 149,048. A keypunch and verification test showed that 980 cards were produced in 2.75 hours. We added 10% for lost time and reduced speed during extended jobs and arrived at an estimate of

474 hours at $6.00 = $2844. If the estimate proved to be too low then, of course, the cost would increase.

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Page 63

Attached is a computation of computer costs per hour dated 3/20/73 and three worksheets pertaining to that computation. Since the programs have not yet been designed it is not possible to determine exactly what computers or what computer components will be used. Therefore, an estimate of $150.00 per hour was made, which is less than the cost of the most frequently used computers (the 360/40 and 360/50).

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F. Sebastian

Page 159

The estimated cost for one day of programming work is $14.36 + 50% per hour × 7.5 = 161.55. Reference is made to the cost computation by Department within ICSC (answer to question on page 39).

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Using the data available for OSCAP, a program is required to select those accounts with purchases during a specified time frame and to sort these and construct a file that can be matched against the current OSCAP file for purposes of identifying these accounts on the current file for a subsequent listing or mailing. The estimated time required for the program to select the accounts is one week of programming or a cost of $807.75.

A sort is required for the OSCAP data and a sort is required for the Oppenheimer Fund data the estimated programing time to prepare these two sorts is a total of three days or $452.34.

The file for the Oppenheimer accounts must then be matched against the current Oppenheimer master file and the accounts in this group identified on the current master file for subsequent listing or mailing. This program is estimated to require not more than three weeks for a single programmer with a maximum cost of $2,423.25. The same procedure would be required for the OSCAP data and the current OSCAP file. The program for OSCAP would be a variation of that used for the Oppenheimer Fund and would have an incremental time requirement of two days and a cost of $301.56.

There is no difference in the prog ming cost between selecting accounts for the entire period 3/28/68—4/24/70 or for the period 3/28/68 to 4/25/69.

Machine time for testing the various programs is estimated to take five hours at $150.00 = $750.00.

The total estimated cost of developing programs would therefore be $4,735.00 which is lower than our original estimate of $7,500.00 due to the fact that we were not aware of the possibilities to reduce programing cost by using virtually the same program on both Voluntary and Contractual Funds.

We have recently discovered that there may be an alternative method employed which could possibly eliminate the need for keypunching. This method will require additional

programing costs which would, however, be less than the possible savings due to elimination of keypunching.

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The estimated cost is two days of programing work which is 2 × 7½ × 21.54 = $323.10. Reference is made to the cost computation by Department within ICSC (answer to question on page 39).